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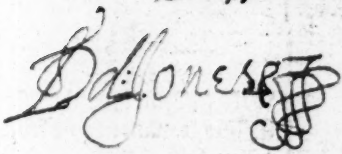
LITTLE

TONS TENVRES in English



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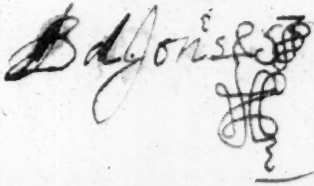
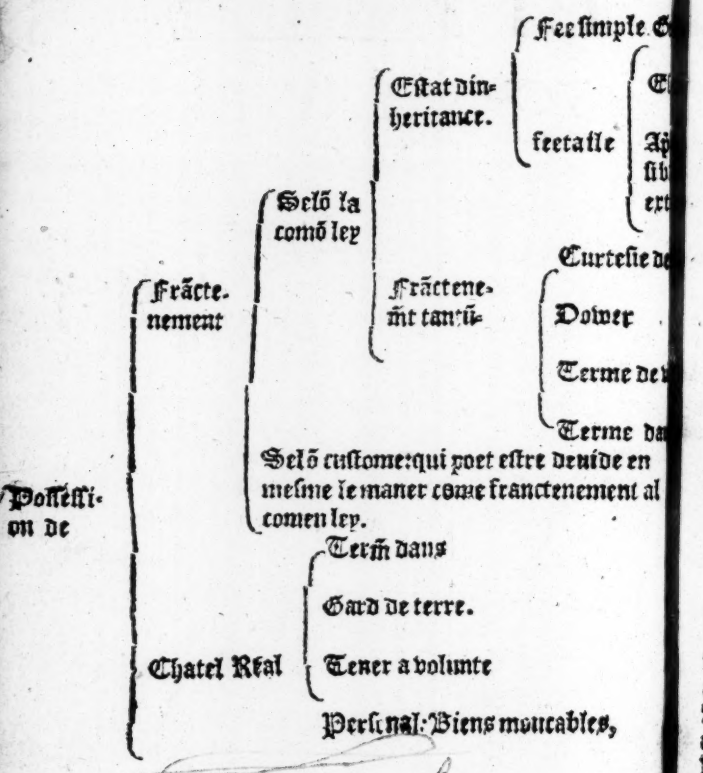


A figure of the diuision of possessions.



May 11. 1935

TEnant in fee ſimple is he which hath landes or tenements to holde to him and to his heires for euer.

¶ And it is called in Latine Feodum ſimplex, for Feodum is called inheritance and ſimplex is as much to ſay, as lawfull or pure, and ſo Feodum ſimplex is as much to ſaye as lawfull or pure inheritaunce. For if a man will purchaſe landes or tenementes, in fee ſimple, it behoueth him to haue theſe wordes in his purchaſe, to haue and to holde vnto him and to his heyres, for theſe wordes (his heyres) make the ſtate of inheritaunce. Anno. 10. H. 6. folio 38.

¶ For if any man purchaſe landes by theſe wordes to haue and to holde to him for euer, or by ſuch wordes to haue and to holde to him and to his aſſignes for euer. In theſe two caſes he hath none eſtate but for terme of life, for y that he lacketh theſe wordes (his heires) which wordes onely make the eſtate of inheritaunce in all feoffements and grauntes.

¶ And if a man purchaſe landes in fee ſimple and dye without iſſue, euerye one that is his next coſin collateral of the whole bloude, howe farre ſo euer that he be from him of degree, maye inherite and haue the ſame lande as heire to him. But if there be father and ſonne, and the father hath a brother, which is vncle vnto the ſonne, and the ſonne purchaſeth lande in fee ſimple, and dyeth without iſſue ſpunge the father, the vncle ſhall haue the lande, as

heire vnto the ſonne, & not the father (yet the father is more nighe of bloud vnto the ſonne) for that that there is a ground in the lawe, that inheritance may lineally deſcend, but not lyneally aſcend, yet if the ſon in ſuch caſe die without iſſue & his vncle entreth into ꝑ lād as heire vnto the ſonne (ſo as he ought by the law) and after if the vncle deceaſe without iſſue liuinge the father, then ſhal the father haue the land as heire vnto the vncle, & not as heire vnto the ſō, for that ꝑ he commeth vnto the lande by collateral diſcent, and not by lyneal aſcention.

And in ſuch caſe where the ſonne pourchaſeth land in fee ſimple, and dieth without iſſue, they of his bloud on the fathers ſide ſhall inherite as heire vnto him, before anye of the bloud of the mothers ſide. But if he haue no heire on the fathers ſide, then ſhall the lande diſcende vnto his heire on the mothers ſide. And this is the oppinion of the Juſtices My. 12. E. 4. folio 34. But there it was holden if any lande diſcende vnto a man by the fathers ſyde which dyeth without iſſue, that his next heire on the fathers ſide ſhal inherit vnto him, that is to ſaye, the next of bloud of the father of ꝑ grandfathers ſide. And for defaut of ſuch an heire, they that be of the fathers bloud of ꝑ parte of the mother of the father (that is to ſaye) the grādmother ought to inherite. And if there be no ſuch heire on the fathers ſide, then the lorde ſhal haue the lande by eſchete. And ſo it is if a man take a wife inherite in fee ſimple,

which

which hath iſſue a ſonne & dyeth, & ỳ ſon entreth into the tenements as ſonne & heire vnto his mother, and after dyeth without iſſue, the heires on the mothers ſide ought to inherite the tenements, and not the heires on the fathers ſide.

And if there bee no heires on the mothers ſide, then the lord of whō ỳ ſame land is holden, ſhal haue the ſame land by eſchete. In ỳ ſame māner it is if lāds diſcende vnto ỳ ſōne on ỳ fathers ſide, which entreth & after dyeth wout iſſue, the land ſhal diſcend vnto ỳ heires on ỳ fathers ſide, & not vnto the heires on the mothers ſide. And if there be none heires on the fathers ſide, then the lord of whom ỳ land is holden, ſhal haue the ſame land by eſchete. And ſo ye may ſee the diuerſitie, where ỳ ſōne purchaſeth lands in fee ſimple, & where he cūmeth vnto thoſe lands or tenements by diſcēt on the fathers ſide or on the mothers ſide.

Alſo if there be three brethren, & the middle brother purchaſeth land in fee ſimple & dyeth without iſſue, the elder brother ſhal haue the land by diſcent & not the ponger. Alſo if there be three brethren, & ỳ pongeſt brother purchaſeth land in fee ſimple & dieth without iſſue: ỳ elder brother ſhal haue the land by diſcent, & not the middle brother, for ỳ that ỳ elder brother is more worthy of bloud.

¶ And it is to be vnderſtode that no man ſhal haue land in fee ſimple by diſcent as heire vnto anye man, vnleſſe hee bee hys heire of the whole bloud. For if a man haue iſſue two ſonnes, by 2. ventres and the elder purchaſeth

land in fee simple and dieth without issue: the ponger brother shal not haue the land but the vncle of the elder brother or some other his nigh cosin shal haue it, for ỳ that the ponger is but of the halfe bloud to the elder brother. And if a man haue a sonne and a daughte by one ventre, and a sonne by an other ventre, & the sonne by the first ventre purchaseth lande in fee simple and dyeth without issue, ỳ sister shal haue the land by discentas heire vnto her brother and not the ponger brother, for that ỳ the sister is of the whole bloud to ẏr elder brother.

And also where a man is seised of lande in fee simple, & he hath issue a sonne & a daughter by one venter & a sonne by an other venter and dyeth, and the elder sonne entreth, & dieth without issue, the daughter shal haue ỳ land and not the ponger sonne, and yet is the yõger son heire vnto his father but not vnto his brother. But if ỳ elder sõne enter not into the land after the death of his father, but dyeth before entre be made by him, then the yõger brother may enter and haue the lande as heire vnto his father. But where the elder sonne in the case afore said, entreth after the death of his father and thereof haue possessiõ, then the sister shall haue the lande. Quia possessio fratris de feodo simplici facit sororem esse heredem. For the possession of the brother in fee simple maketh the sister to be heire.

But if there bee two brethren by diuers ventres

ventres, and the elder is ſeiſed in fee ſimple & dieth without iſſue, and his vncle entreth as heire vnto him, which also dyeth without iſſue, then the yonger brother may haue ỳ land as heire vnto his vncle, bycause hee is of the whole bloud to him though he be but of halfe bloud vnto his elder brother.

And it is to be vnderſtood, that this worde inheritaunce is not onely vnderſtood where a man hath landes or tenements by dyſcent of heritage. But also euery fee ſimple or fee taile that a man hath by his purchaſe, may be ſaid inheritance, for that, that his heires may inherite him. For in a writ of right that a man bringeth of lande, that was of his owne purchaſe, the writ ſhal ſay: Quam clamat eſſe ius & hereditatem ſuam. That is to ſaye, whiche hee claimeth to be his right and his inheritance. And ſo it ſhalbe ſaide in diuers other writs which a man or a woman bringeth of their owne purchaſe, as it appeareth by the Regiſter.

And of ſuch things as a man maye haue a manuel occupation, poſſeſſion, or reſceyte, as of landes, tenements, rentes, and ſuch other, a man ſhal ſaye in his pleading, and waye of barre, that one ſuch was ſeiſed in his demeſne as of fee. But of ſuch things as lye not in manuel occupation &c. As of aduowſon of a Church, and ſuch maner thing: there he ſhall ſaye, that hee was ſeiſed as of fee, and not in hys demeſne as of fee. And in latine it is in

ẏ same case said. Quod talis fuit seisitus in dominico suo vt de feodo, that is to saye, that such one was seised in hys demeane as of fee, and in the other. Quod talis fuit seisitus vt de feodo, that is to saye, that one such was seised as of fee.

And note well that a man maye not haue a more large ne greater estate of inheritaunce, then fee simple.

Also, purchase is called the possession of lādes or tenemēts that a man hath by his dede or by his agreement, vnto which possessyon hee commeth, not by discent of anye of his auncesters, or of his cousins, but by his owne deede.

¶ Fee tayle.

TEnant in fee tayle is by force of a statute of westminster the secōd, Capit primo. For at the common law before the said statute, all inheritances were fee simple. For al the gifts which bene specified within the same statute, were fee simple conditionally, as it appeareth by the rehearsall of ẏ statute. And now by the same statute, tenant in the taile is said in two maners, that is to say, tenant in taile generall and tenant in taile special.

Tenant in taile generall is, where landes or tenements be geeuen to a man and to hys heires of his body begotten. In this case it is sayde generall tayle, for that that whatsoeuer woman that the tenant taketh to wyfe, if hee haue many wiues, and by eche of them hath issue

issue, yet ech one of these issues by possibilitie maye inherite the tenements by force of the sayd gift, because that euerye such issue is of his body engendred.

In the same maner it is, where lands & tenements bee geeuen to a woman and to the heires comming out of her body, howbeit that shee haue many husbands, yet the issue that shee may haue by ech husbande, maye inherite as issue in the taile, by force of such gifts. And therefore such giftes beene called generall tayle.

Tenant in tayle special, is where landes and tenements bee geeuen vnto a man and hys wyfe and the heires of their two bodies begotten. In such case none may inherite by force of such gifte, but those that bee engendred betweene them two, and it is called special tayle, for that if the wyfe dye, and he taketh an other wife, and hath issue, the issue of the second wyfe shall neuer inherite by force of such gift. Nor also the issue of the seconde husbande if the firste husbande dye.

In the same maner it is, where lands and tenements bee geeuen by a man vnto an other with a wife, which is the daughter or cosin to the giuer, in franke maryage, whych gifte hath inheritance by these words (franke mariage) vnto it annexed, howbeit that they bee not expressely said or rehearsed in the gift that is to saye, that these doneés shall haue these landes or tenements to them & to their

heires

heires betweene the two engendred, & this is tano especial taile, for that the issue of the second wife may not inherite.

And note wel that this worde talliare, is to say to set vnto some certaintie, or els limit vnto some certaine inheritance. And for ỳ ỳ it is limitted and set in certaine, what issue shal inherite by force of such giftes, and how long that the inheritance shal endure. Therefore it is called in latin, Feodum talliatum. i hereditas in quadam certitudine limitata. For if tenant in generall taile dy without issue ỳ donour or his heires shal inherite as in their reuersion, in the same wise is it of the tenant in the taile special &c. For in euery gift of ỳ taile without more saying, the reuersion of fee simple is in the donour.

And the donees and their heires shall doe to the donour and to his heires, such seruices as ỳ donour doth vnto his Lorde next aboue. Except the donees in franke mariage, which shal hold quietly from euery manner seruice, (vnlesse it be for fealtie) vntil the fourth degree be past. And after that the fourth degree is past the issue in the fift degree, and so forth the other issues after him, shal hold of the donour and of his heires as they holde ouer, as is afore saide.

And the degrees in franke mariage shalbe accounted in such maner, that is to say, from the donour to the donees in franke mariage ỳ first degree, for that that the wife that is one

of

of the donees ought to bee daughter, sister, or other cosin to the donoure. And from the donees vnto their issue shalbe accompted the second degree. And from their issue vnto their issue, the third degree and so forth &c.

And the cause is, for that after euery such gifte, the issues that come of the donoure, and the issues that come of the donees after the fourth degree paste of bothe parties in suche fourme to bee accounted, may betwixt them by the law of holy Church inter marry. And that the donee in franke mariage shalbee the first degree of the foure degrees, a man maye see in a plee vppon a writ of ryght of warde, Anno. 31. Edwar. 3. where the plaintife pleadeth that this ayel or grandfather was seised of certaine landes &c. And that he helde of an other by knightes seruice &c. Which gaue the land vnto one Raufe Holland with his sister in franke mariage &c. and also these tailes before said, be specified in ỳ said statute of Westminster the second.

And there be diuers others estates in the taile, howbeit that they bee not specified by expresse wordes in the said estatute, but they bee taken by the equitie of the statute, as if lands bee giuen vnto a man and to his heires males of his body engendred. In such case his heire male shal inherite, and the issue females shal neuer inherite, yet in these other tailes aforesaid it is otherwise. In the same maner it is if landes be geuen to a man and

to

to his heires females of his body engendred. In this case his issue females shall inherite by force and fourme of the said gift, and not the issue male, for that in such cases where the gift is who ought to inherite and who not, the wil of the donour shal be obserued. And in case where lands be giuen vnto a man and to his heires males issuyng of his body and he hath issue two sonnes and deceaseth, the elder sonne entreth as heire male, and hath issue a daughter & deceaseth, his brother shall haue the lande and not the daughter, for that the brother is heire male. But it shalbe otherwise in these other tailes aforesaid, which bin specified in the said estatute, the daughter shal enherite before the brother.

And if lands be geeuen vnto a man, and to his heires males of his body engendred and hee hath issue a daughter, which hath issue a sonne and deceaseth, and after that the donour deceaseth: in this case the sonne of the daughter shal not inherite by force of the taile for that whosoeuer shall inherite by force of a gifte in the tayle made vnto hys heires males behoueth to conuey hys discent alwaye by the males. M. decimo octauo Eduardi tertij folio 45. But in such case the donour shall enter for that the donee is dead without issue male in the lawe. In so much that the issue of the daughter maye not conueighe to hym the dyscent by heire male. And in the same manner it is where lands bee giuen to a man and to his wife and to his heyres

males

males of their two bodies ingendred.

Also if tenements bee giuen to a man and his wife, and to the heires of the bodye of the man engendred, in this case the husband hath estate in the general taile & the wife but estate for terme of life.

Also if landes bee geeuen to the husbande and to the wife, and to the heires of the husbande which hee engendreth of the bodye of the wife. In this case the husband hath estate in the speciall taile, and the wife but for terme of life.

And if the gyfte bee made to the husbande and to the wife, and to the heires of the wyfe of her bodye by the husbande engendred, then the wife hath estate in the special taile, and the husband but for terme of life. But if landes bee geeuen to the husbande and the wyfe, & to the heires that the husbande engendreth on the bodye of the wyfe: In this state both haue estate in the tayle, for that this worde (heires) is lympted as more to the one then to the other.

Also if landes bee geeuen to a man and to hys heires that hee engendreth on the bodye of hys wyfe, in this case the husbande hath estate in the tayle special, & the wyfe nothing.

Also if a man haue issue a sonne, and deceaseth, and the lande is giuen to the sonne, and to the heires of the body of his father ingendred, this is a good taile, & yet the father was dead at the time of the gift.

Also

¶ Also there be many other estates in ỹ tayle by the equitie of the saide statute that bee not specified here. But if a man giue landes or tenements to an other to haue and to hold to him and to his heires males, or to his heires females, hee to whom such gift is made hath fee simple, for that it is not limitted by the gifte of what body the issue male or female shal be, and so it may not in any thing be taken by the equitie of the said statute, and therefore he hath fee simple.

¶ Tenant in taile after possibilitie of issue extinct.

TEnaunt in the tayle after possibilitie of the issue extinct, is where as lands or tenemẽts be geuen vnto a man and to his wife in special taile, if one of them decease without issue, hee that surueyeth is tenant in the tayle after possibilitie of issue extinct. And if they haue issue durynge the life of the issue, hee that surueyeth shal not bee sayd tenant in the tayle after possibilitie of issue extinct, yet if the issue decease, without issue, so that there be none alyue that may inherite by force of the tayle, then he that surueyeth of the donees is tenant in the tayle after possibilitie of issue extinct.

¶ Also if lands be giuen to a man and to hys heyres that bee engendred on the bodye of his wife. In this case the wife hath nought in the tenementes, and the husbande is seyssed

ſed as donee in ſpecial taile. And in this caſe if he wife deceaſe without iſſue of her body engendered by her huſbande, then the huſband is tenaunt in the tayle after poſſibilitie of iſſue extinct.

¶ And note well, that none may bee tenaunt in the tayle after poſſibilitie of iſſue extinct, but one of the doneés, or the donee in ſpeciall taile, for the donee in general taile may neuer be ſaid tenant in the taile after poſſibilitie of iſſue extinct, for that alway during his life, he may by poſſibilitie haue iſſue that may inherite by force of the ſame tayle. And ſo in the ſame maner the iſſue that is heire vnto the doneés in a ſpecial tayle, may not be ſaid tenant in taile after poſſibility &c. cauſa qua ſupra.

¶ And tenant in taile after poſſibilitie of iſſue extinct ſhal neuer bee puniſhed of waſt, for the inheritaunce that once was in him An. 10. H. 6. fo. 1. But he in the reuerſion may enter if hee doth alien in fee. An. 45. E. 3. fo. 22.

¶ Tenant by the curteſie of England.

TEnaunt by the curteſie of Englande, is where a man taketh a wyfe ſeyſed in fee ſimple, or in fee tayle generall, or as heyre in the tayle ſpeciall, and hath iſſue by the ſame wife, male or female. The iſſue after beeinge dead or aliue, if the wyfe deceaſe, the huſbande ſhal holde the ſame during his life by the lawe

of

of England, & this is called tenant by the curtesy, for that is not vsed in any other Realme but onely in Englande. And some say that it shall not be said tenāt by the curtesy, but if the child that he hath by his wife be hard crye, for by the cry is the proofe that the childe that hee had by his wife, was borne.

¶ Tenant in Dower.

TEnant in Dower is, where a man is seised of certeine lands or tenements in fee simple or in taile general, or as heire in the taile special and taketh a wife and deceaseth, the wife after the decease of her husbande shall bee endowed of the thirde parte of such landes or tenements that were her husbandes anye tyme duringe the couerture, to haue and to holde to the same wife in seueraltye by metes and bondes for the terme of her life, whether shee haue by her husbande issue or none, and of what age that the wyfe bee, so that shee passe the age of nyne yeeres at the time of her husbandes death, or els shee shall not bee endowed. And note well, that by the cōmon lawe, the wife shall not haue for her dower but the thirde parte of the tenements, which were her husbands during the espousels. By custome of some countrey shee shal haue the halfe, and by custome of some towne or borough, shee shal haue the whole, and in al these cases shee shal bee sayd tenaunt in dower.

And

¶ Also there is two other maner of dowers, that is to say, dower called dowement at the church dore, and dower, called dowement by the fathers assent. Dowment at the Church dore, is where a man of ful age is seised in fee simple which shall be wedded vnto a wyfe, when hee commeth to the Church dore, and there after affiance, and trueth pleyght made betweene them, endoweth his wyfe of hys whole lande, or of the halfe, or lesse parcel, and there openly declareth the quantity, & the certainty of his lande that shee shal haue for her dower. In this case the wife after the death of her husbande shal enter into the said quantity of lande, of which her husband endowed her without the assignement of any manne.

Dowement by the fathers assent is, where the father is seised of tenementes in fee, and his sonne and heire apparaunt (when hee is wedded) endoweth hys wyfe at the Churche dore of parcel of the landes or tenementes of his fathers, by the assent of his father, and assigneth the quantity of the parcels: In thys case after the death of the sonne, the wife shal enter into the same parcel without ỹ assignemẽt of any other. But it hath bin said in this case that it behoueth the wife to haue a dede of the father, prouinge his assent and consent of such endowment. And if after the death of her husbande shee enter and agree to anye such dower of the sayd two dowers at the church dore, then shee is concluded to claime

any other Dower by the common law of any landes or tenementes, which were of the sayde husbande. But if shee will, shee maye refuse such dower at the Church doore, and then she may bee endowed after the course of the common lawe. And note well, that no wife shall be endowed of the fathers assent in the fourme aforesayde, saue where the husbande is sonne and heire apparant to his father.

¶ Inquire of these two cases of Endowement at the Church doore &c. if the wife at the time of the death of her husbande passe not ỹ age of nine yeares, if she shal haue such dower or no.

¶ And note wel that in al cases where the certaintie appeareth what landes or tenementes the wyfe shal haue for her dower, the wyfe maye enter after the death of her husbande without assignement of anye other. But where the certaintie appeareth not, as to bee endowed of the third parte, to haue in seuerall, or to bee endowed of the halfe after the custome, to holde in seueraltie: In suche cases it behoueth that her Dower bee vnto her assigned after the death of her husband because it is not limitted before the assignement what partes of landes or tenementes she shal haue for her dower. But if there bee two Joyntenaunces of certaine landes in fee and the one alieneth that that to him pertayneth and belongeth, to another in fee, whiche taketh

taketh a wife, and after dyeth: In this case the wife for her dower shall haue the thyrde part of the halfe that her husband purchased. to holde in common, and occupie in common as her part amounteth, with the heire of her husbande, and with the other Joyntenaunt whych alyened not, for that in suche case her dower maye bee assigned by metes and boundes.

¶ And it is to be vnderstood, that ỳ wife shal not be endowed of landes or tenements that her husband ioyntly held with another, at the time of his death. But where he holdeth in common otherwise it is, as in the case aforesayde. And it is to witte, that if the tenant in taile endowe his wife at the church doore as it is aforesaid, ỳ shal serue for little or naught to the wife, for that that after the death of her husband the issue in the taile may enter vpon the possession of the wife, and so may he in the reuersion if there be no issue in the taile alive.

¶ Also if a man seised in fee simple being vn in age, endowe his wife at the church dooze and dieth, and the wife entreth. In this case ỳ heire of her husband may put her out. But otherwise it is as it seemeth where the father is seised in fee, & the sonne within age endow his wife, of his fathers assent, the father then being of ful age.

¶ And there is an other Dower whych is called dowement de la pluis beale. And that is in suche case that a manne is seised

of xl. acres of lande, and hee holdeth xx. of the said xl. acres of one man by knyghtes seruice, and the other xx. acres of an other in socage, & taketh a wife, and hath issue a sonne, and dieth his sonne being within the age of 14. yeeres, and the lord of whom the lande is holden by knyghtes seruice entreth into the xx. acres of lande holden of him, and then hath and occupieth as warden in chiualry during the childes nonage, and the childes mother entreth in the remnant, and it occuppeth as garden or warden in Socage. If in this case the wyfe bring a writte of Dower against the warden in chiualrie, to bee endowed of the tenements holden by knightes seruice in ỳ kinges Court, or in any other court, the gardeine in chiualrie may pleade in such cas all the matter, and shew how the wife is warden in socage as is afore saide, and praye that it maye bee adiudged by the court ỳ the wyfe endowe her selfe of ỳ most faire, called Pluis beale, of the tenements that she hath as warden in socage, after the value of the third part that she claymeth to haue of the tenementes in chyualrye by her writte of dower, and if the wife may not gaine say it, then the iudgement shal be made that the wardē in chiualry shal holde the landes holden of him during the nonage of the childe quite from the woman &c. And that the woman may endow her selfe of the most faire part of the lands that shee hath as warden in socage ta the value of the thyrde

part

part that the warden in chiualrie hath, &c.
And after such iudgement gæuen, the wyfe may take her neighbours, and in their preſẽce endow her ſelfe by mætes and bounds of the faireſt part of the tenements that ſhæ hathe, as warden in ſocage, to the value of the third part of the landes that the warden in chiualry hath, and that to haue and holde for terme of her life. And ſuch dower is called dower of the faireſt part, or de pluis beale.

¶ With this agræth .45. Ed. 3. f. 4. But there it was ſaid, that after the time that the heire come to his full age, the wife ſhall haue a new accion of dower againſt the heire, to be endowed of the third part of all that the man deied ſeſed, And note wel that ſuch dowment may not be, but where the iudgement is giuẽ in ỳ kings court, or in ſome other court. And the wife may do this for ſaluation of ỳ eſtate of the warden in chiualrye during the nonage of the childe. And ſo ye may ſæ fiue maner of dowers, that is to ſay, dower by the commen lawe, dower by cuſtome, dower at the church dore, dower of the fathers aſſent, and dower of the moſt faire. And remember that in euery caſe where a man taketh a wife ſeiſed of ſuch eſtate of tenementes &c. ſo that the iſſue that he hath by his wife may by poſſibilitie inherite the ſame tenementes of ſuche eſtate that the wife hath, as heire to the wife: In ſuche caſe after the wyfe is dead, hæ ſhall haue the ſame tenementes by the curteſy of Eng-

land & otherwise not.

¶ And also in euery case where the wyfe taketh an husband seised of such estate of tenements &c. so that by possibilitie it maye happe the wife to haue some issue by her husband, & that the same issue may by possibilitie inherite the same tenēts of such estate that the husband had as heire to his father: of such tenementes shee shall haue her dower, and otherwise not. For if the tenements be geuen vnto a mā & to his heires that he getteth on his wiues body, in such case the wife hath nought in the tenements, and the husband hath estate but as donee in special taile. Yet if ỳ husbande die without issue, the same wife shalbe ēdowed of the same tenements, for that the issue ỳ she by possibility might haue had by the same husband, may inherite the same tenementes. But if ỳ wife decease liuing ỳ husbād, which after taketh an other wife, ỳ second wife shal not be endowed in this case. Causa qua supra.

¶ A man was seised of certaine landes, and take wife, and after aliened the same landes with warrantye, and after the feoffour and feoffee dyed, and the wife of the feoffour bryngeth an action of dower against the issue of the feoffee, and hee vouched the heire of the feoffour, and during the voucher and not termined, the wife of the feoffee bryngeth an action of dower against the heire of the feoffee, and demaundeth the thirde parte of all that her husband was seised, and woulde not demaund

maunde the third part of those two partes ẏ her husband was seised, it was aiudged ẏ shee should haue no iudgemēt vntil the time ẏ the other plee were determined.

And alo note that Vauisour sayth, that yf a man be seised of landes, and committeth felony, and alyeneth, and after is attainted, the wife shal haue good accion of dower against the feoffee. But if it be escheated vnto ẏ king, or vnto the lorde, shee shall haue no writte of dower. And so see the diuersitie, and enquire the cause.

¶ Tenant for terme of life.

TEnaunt for terme of life is, where a man letteth lands or tenements to another for terme of life of the lessee, or for terme of lyfe of an other man. In such case the lessee is tenaunt for terme of lyfe. But by common language, hee that holdeth for terme of his owne life, is called tenaunt for terme of life, and hee that holdeth for terme of an other mans life, is called tenaunt for terme of an other mans life. And it is to be vnderstoode, that there is feoffour and feoffee, donour, and donee, lessour & lessee. The feoffour is properly where a mā enfeoffeth an other in anye landes or tenements in fee simple, he that maketh the feoffemēt is called feoffour, and he vnto whom ẏ feoffement is made, is called feoffee. And the donour is properlye where a manne geeueth certaine landes or tenementes to another in

the taile, he that maketh the gift is called donour, and he to whom the gift is made is called donee. And lessour is properly where a man letteth to an other certaine landes or tenementes for terme of life, for terme of yeres or to holde at will, he that maketh the lease is called lessour, & he to whom the lease is made is called lessee, and euery one that hath estate in lands or tenements for terme of his owne life, or for terme of an other mans life, is called tenaunt of freeholde. And none of lesse estate may haue freeholde, but they of greater estate may haue freeholde, for tenaunt in fee simple hath freehold, and tenant in the taile hath also freehold.

¶ Tenant for terme of yeres.

TEnant for terme of yeres is, where a man letteth lands or tenements to an other for terme of certaine yeres after the number of yeres that is accorded betweene the lessour and the lessee, and when the lessee entreth by force of the lease, the is he tenāt for terme of yeres, and if the lessour in such case reserue to him a yerely rent vpon such lease, he may choose for to distraine for the rent in the tenements letten, or els he maye haue an accion of debt for the arrerages against the lessee. But in suche case it behoueth that the lessour bee seysed in the same tenemēts at the time of his lease, for it is

it is a good plee for the lessee to say, that ỳ lessour had nothing in the tenementes at ỳ time of the lease, except the lease bee made by deede indented, in which case then such plee lyeth not for the lessee to plede.

¶ And it is to be vnderstoode, ỳ in a lease for terme of yeeres by deede or without deede, it nedeth no liuery of seisin to be made to the lessee, but he may enter whensoeuer hee will by force of the same lease. But of feffemẽts made in the countrey, or giftes in the taile, or leases for terme of life, in such cases where freeholde shal passe, if it be by deede or without deede, it behoueth to haue liuery of seisin &c. But yf a man let lands or tenements by deede or without deede for terme of yeres, the remainder ouer to an other for terme of life, or in the taile, or in fee, then in such case it behoueth that ỳ lessor make liuery of seisin to ỳ lessee for terme of yeeres, or else there shall nothinge passe to them in the remainder, though the lessee enter in the tenements. And if the termour in such case enter before any such liuerie of seisin made vnto him, then is the freeholde and ỳ reuersion in the lessour. But if he make any liuerie of seisin vnto the lessee, then is the freeholde with the fee to them in the remaynder after the forme of the graunt, and will of the lessour.

¶ And if a man will make a feoffement by deede or without deede of landes or tenements that he hath in manye Townes in one shere, if the liuery of seisin bee made in one parcell

parcell of the tenements in one towne in the name of al, it sufficeth for all the other landes or tenements comprehended in the same feoffement, in al other townes in the same shyre, But if a man make a dæde of feoffement of landes or tenementes in diuers shires, there it behoueth him to haue in euery shire a liuery of seisin. And in such case a man shall haue by the graunt of an other fee simple, fee tayle, or fræhold, without liuery of seisin. And if ỹ. mẽ bee, and ech of them is seised of a quantitie of land within one shire, and the one graunteth his lande to the other in exchange for that lãd that the other hath, & in the same maner the other granteth his land vnto the first grantor in exchange for the land ỹ the first grãtor hath In this case ech may enter in ỹ others landes so taken in excãge wout any liuery of seisin. And such exchange made by wordes, of tenements win the same shire without any wryting, is good inough. And if the landes or tenements be in diuers shires, that is to say, yf that the one haue be in one shire, & ỹ the other haue in an other shire, it behoueth to haue a dæde indented made betweene them of suche exchange.

¶ And note, that in exchange it behoueth ỹ the estates that both parties haue in ỹ landes so exchanged, be equal. For if the one willeth & graunteth that the other shal haue his land in the taile for ỹ lãd that he hath of the grant of the other in fee simple, though the other agree to that, yet this exchange is but void, for

that

that the estates be not euen.

¶ In the same maner it is where it is grañ=red and agreed betweene them, ẏ the one shall haue in the one land fee taile, & the other shall haue in the other land but teeme of life: Or if one shall haue in the one lande fee taile general, and the other in the other land fee taile especial, &c. So alway it behoueth ẏ in eschãge the estate of both parties bee euen, that is to saye, if the one haue fee simple in the one land, that the other shal haue suche estate in the other land, and if the one haue fee taile in the one land, then the other shall haue likewyse in the other lande. Et sic de alijs statibus. But it is nothinge to charge of the euen value of the landes, for though that the lande of the one is so much more in value then the lande of the other, this is nothinge to purpose, so that the estates made by the exchaunge bee euen, and in exchaunge bee two grauntees, for euerye partye graunteth hys lande to the other in exchaunge, and in ech of their grauntes mencion shalbe made of the exchange.

¶ And if a mã let land to an other for terme of yeeres, though, the lessour dye before ẏ lessee enter into the tenements, yet may he enter into the tenements after the death of ẏ lessour, for that, that the lessee by force of ẏ lease hath right incontinent to haue the tenementes after the fourme of the lease. But if a man make a deede of feoffement vnto another, and a letter of attorney to a man to deliuer to him

seisin

seisin by force of the same deede, yet if the liuery of seisin be not made in the life of him that made the deede, it auayleth not, for that the other hath no maner of right to haue the tenements after the purport of the deede before ỳ liuery of seisin &c. And if no liuery bee made then after the death of him ỳ made the deede ỳ right of such tenemẽts is incõtinẽtly in hys heire or in some other. Also if tenementes bee let to a man for terme of halfe a yeare, or for terme of a quarter of a yere &c. In such case if the lessee make wast, the lessour shall haue against him a writ of wast, and the writ shall say: Qui tenet ad terminum annorum, But hee shal haue a special declaration vpon the troth of this matter, and the plee shal not abate the writ for that that he may haue no other writ vpon the matter, An. 7. H. 7. fo. 1.

¶ Tenant at will.

TEnant at will is, where landes or tenements be lettẽ by a man vnto another, To haue and to hold to him at the wil of the lessour by force of which lease ỳ lessee is in possession. In such case the lessee is called tenant at wil, for that he hath no certaine sure estate, for the lessour may put him out at what time it pleaseth him, yet if the lessee sawe the land, and the lessour (after the sowing and before that his graines bee ripe) put him out, yet shal the lessee haue his graines, and shal haue free egresse and regresse to reape and to carrye

hys

his graines, for that he will not at what time his lessour would enter vpō him. Otherwise it is if tenant for terme of yeres before ẏ ende of his terme soweth the lande, and the terme ende before that his graines be ripe. In this case the lessor, or he in the reuersion shal haue the graines for that the fermour knewe well the certaine of his terme, and when his terme should be ended.

¶ Also if a house be let to a man to holde at will, by force of which the lessee entreth into ẏ house, within which house he bringeth his houshoide stuffe, and after the lessour putteth him out, yet shall he haue free entre, egresse, and regresse, in the same house by reasonable tyme to carry his goods and houshoide stuffe. And if a man be seised of a house in fee simple fee taile, or for terme of life, the which hathe certaine goods within the same house, and maketh his executors and deceaseth, whosoeuer after his death hath the house, yet shall his executors haue free entre, egresse, and regresse, to carry out of the house the goods of their testators by a reasonable time.

¶ Also if a man make a deede of feoffement vnto an other of certaine land, and delyuereth to him ẏ dede, but no liuery of seisin, In thys case he to whom the deede is made may enter into the land, and holde and occupie it at the wil of him that made the dede, for that, ẏ it is proued by the wordes of the deede, that it is his wil that the other shal haue the lād. But

hee

he that made the dæde, may put him out whē he will.

¶ Also if an house be let to holde at will, the lessee is not hobden to sustaine or repayre the house as tenant for terme of yeres is holden to do. But if the lessee at will make voluntarie wast, as in putting downe of houses, or in cutting or felling of trees: It is said that the lessour shal haue for that against him an accion of trespasse. As if I deliuer to a man my shæpe to doūg or marle his land, or mine oxen to ayre his land, and he slaieth the beastes, I may wel haue an accīō of trespas against him notwithstanding the deliuery.

¶ Also if the lessour vpon such lease at will reserue vnto him a yearely rent, hee may distreine for the rent behinde, or haue for that an accion of debt at his owne choice H.6.K.2. in a Repleuin.

¶ Tenant by copy of court roule.

TEnant by copy of court roule is, as if a mā be seised of a manner within which manner there is a custome, and hath bene vsed in time out of minde, that certayne tenauntes within ỳ same manner haue vsed to haue lāds or tenementes, to holde to them and to their heires in fæ simple, or in fæ taile, or for terme of life &c. at the will of the lorde, after the custome of the same manner, and such tenaunt maye not alyen the lande, by dæde, for then the

the Lorde may enter as in a thing forfayt to him. But if he will alien his land to another, him behoueth after some custome to surrender the tenementes in some court &c. into the Lordes handes to the vse of him that shall haue the estate, in such fourme, or to such effecte. Ad hanc curiam venit A, de B. & sursum reddidit in eadem curia, vnum mesuagium &c. in manus domini ad vsum E de A. & heredum suorum, vel heredum de corpore suo exeunt, vel pro termino vitæ sue &c. Et super hoc venit prędictus E. de A. & cæpit de domino in eadem curia mesuagium prędictum &c, habendū & tenedum sibi & heredibus suis, vel sibi & heredibus de corpore suo exeuntibus, vel sibi, ad terminū vite sue, ad voluntatem domini secundum consuetudinē manerij faciend & reddendo inde redditus, debit seruitia, & cōsuetudines inde prius debita & de iure consueta, & dat domino de fine &c. Et fecit domino fidelitatē &c that is to say, A of B, commeth vnto this court, and surrēdreth in the same court a mese &c. into the handes of the Lorde, to the vse of E. of A. and his heires, or to the heires issuyng of his bodye, or for terme of life, &c. And vpon that commeth the forsaid E. of A. and taketh of the lord in the same court, the forsayde mese &c. To haue & to hold to him & to his heires, or to him & to the heires issuing of his body, or to him for terme of life, at the Lords will after the custome of the manner to do & pælde there-

therefore rentes, debts, seruices and customes thereof before due and accustomed &c. and geueth the Lord for a fine &c. and maketh vnto the Lorde his fealtie &c. And such tenants bene called tenants by coppe of Court roule, for that they haue none other euydence concerninge their tenementes but the coppes of the court roules, and such tenauntes shal not implede, nor be impleded for their tenements by the kinges writte, but if they will implede other for their tenemẽts, they shal haue a plaint made in the court of the Lord in such forme, or to such effect, A. de B. queritur vers' C. de D. de placito terre, videlicet de vno mesuagio quadraginta acris &c, quatuor acris parti &c. cum pertinentijs. Et facit protestationem sequi querelam istam in natura breuis domini Regis assise mortis antecessoris ad cõmunem legẽ, vel breuis domini Regis assise noue disseisine ad communem legem.

That is to say, A. of B. complaineth against C. of D. of a plee of lande, that is to saye of a mese, and fortie acres of lande, foure acres of medowe &c. with the appurtenaunces, & maketh protestation to sue his plaint in nature of the kings writ of assise of the death of his antecessour, at the common law, or by writ of our souereigne lorde the king of assise of Nouel disseisin at the common lawe, or in nature of some other writ &c. pledges to prosecute F. G. &c. And though ꝑ some such tenants haue inheritance after the custom of the maner, yet they

They haue none estate but at the lords will, & after the course of the common lawe, for it is sayd, if the Lorde put them out, they haue no other remedy but to sue vnto the lord by petition. For if they had any other remedy they should not be said tenaunts at the lordes will after the custome of the manner, but the Lord will not breake the custome ẏ is reasonable in such cases. But Brian chiefe Justice sayeth that his opinion alwaies hath bene, and alwayes shalbe, if such a tenaunt by custome (paying his seruices) bee cast out by the lord, he shal haue an accio of trespasse against him. H.21.E.4. And likewise was the opinion of Danby chiefe Justice M.7.E.4. for hee sayeth that the tenaunt by the custome is aswell inherite to haue the land after the custome, as wel as hee that hath the franktenement by ẏ common law.

TEnauntes by the yarde bee in such nature as tenauntes by copy of court roule. But the cause for which they bee called tenauntes by the rodde, or yarde is, for that when they will surrender their tenementes into the Lordes hande to the vse of an other, they shal haue a lyttle yarde or rodde by the custome & vse, in their handes, which they shall deliuer vnto the stewarde or baylyfe, after the custome and vse of the manner. And he that shall haue the land, shal take the same lande in the court, and his taking shalbe entred in the role And the stewarde or the baylife, accordinge to

the custome, shall deliuer vnto him that taketh the lande, the same yard or another yarde in the name of seisin. And for this cause they bee called tenauntes by the yarde. But they haue none other euidence but coppe of ỳ court roule.

¶ And also in diuers lordships and manours there is such a custome if such a tenant that holdeth by the custome will alyen hys landes or tenementes, hee maye surrender his landes vnto the Baylife, or to the Reeue, or to two sad men of the same lordship, to ỳ vse of him, that shal haue the land, to haue in fee simple, fee taile, or for terme of life &c. and all that shal be presented at the next court. And then he that shall haue the lande by coppe of court roule, shal haue the same lande after the entent of the surrender. And it is to witte, that in diuers lordships and diuers manners, there be made diuers customes in such cases, as to make tenements, & as to plee̅, & as touching other things and customes to bee done, & al that that is not against reason, may well be admitted and alowed. And such tenaunts that holde after the custome of a seigniory, or after ỳ custome of a māner though they haue estate of inheritaunce after the custome of ỳ lordship, or of ỳ māner, yet because they haue not any freehold by the course of the common law, they be called tenauntes by base tenure.

¶ And diuers diuersities there be betweene a tenant at wil which is in by the lease of his lessour

leſſour by the courſe of the common lawe, and tenant after the cuſtome of the manner in the fourme afozeſaid. For tenant at will after the cuſtome may haue eſtate of inheritance as it is afozeſaid at the Lozds will after the cuſtome and vſage of the manner: But if a man haue lands oz tenements within ſuch manner oz lozdſhip where ſuch cuſtome hath bene vſed in the fourme afozeſaid, and will let ſuch landes oz tenementes to another, to haue and to holde to him and to his heires at the will of his leſſour, theſe wordes, to the heires of the leſſee bee voyde, for this is the cauſe, if the leſſee dye and his heire enter, the leſſour ſhal haue a good accion of treſpas againſt him, but not ſo againſt the heire of the tenant by the cuſtome in anye caſe &c. for that the cuſtome of the manner in ſome caſe maye helpe him to barre his Lozde in an action of treſpas.

¶ Alſo tenant by the cuſtome in ſome places ought to repaire and ſuſtaine the houſes and the other tenant at will ought not. Alſo one by the cuſtome ſhal do fealtie & the othe not. And diuers other diuerſities there be betweene them.

¶ Thus endeth the firſte booke.

HOmage is the moſt honorable ſeruice and moſt humble ſeruice of reuerence that a francktenaunte maye do to his Lord. For when the tenaunt ſhall make homage to his lord, hee ſhal diſcende, and his head vncouered, and his Lord ſhall ſit, and the tenaunt ſhall kneele before him on both his knees, and hold his handes ioyntly togither betweene the handes of hys Lord, and ſhal ſay thus, I become your man from this day forward of life and limme, & of earthly worſhip, & vnto you ſhalbe true & faithful, & beare you faith for the tenements that I claime to holde of yon, (ſauing the faith I owe vnto our ſoueraigne Lord the king.) And then the lorde ſo ſitting ſhal kiſſe him.

¶ But if an Abbot, or Priour, or anye other man of religiou ſhal make homage vnto hys Lorde, hee ſhal not ſaye, I become your man, for that he hath profeſſed him ſelfe onely to be Gods man. But he ſhall ſay thus, I do you homage, and vnto you ſhall be true and faithfull, and beare you faith for the tenementes that I claime to holde of you. Sauing the faith that I owe vnto our ſoueraigne Lorde the king.

¶ Alſo if a woman ſole ſhall make homage vnto her Lorde, ſhee ſhall not ſaye, I become your woman, for that is not conuenient for a woman to ſaye that ſhee ſhall become the woman to any but onely to her huſband

band when she is wedded. But shee shall saye I make vnto you homage, and to you shalbee true and faithful, & shal beare you faith for the tenementes that I holde of you, sauing the faith I owe vnto our soueraigne Lorde the king.

But if a man haue seueral tenancies which he holdeth of seueral Lordes, that is to saye, euery tenācie by homage. Then when he maketh homage vnto one of his Lordes, he shall saye in the ende of his homage. Sauinge the fayth that I owe vnto the king and vnto my other lords.

¶ And note wel that none make homage but such as haue estate in fee simple, or in fee tayle in his owne righte, or in an other mans right. For it is a ground in the lawe, that hee ẏ hath estate but for terme of lyfe, shall make none homage, nor take none homage.

For if a woman haue landes or tenementes in fee simple or in fee tayle, which shee holdeth of her Lorde by homage, and taketh an husband and hath issue, then the husbande in the life of the wife shal make homage, for that hee hath title to haue the land by the curtesie, yt̄ he suruiue his wife. And also he holdeth in ẏ right of his wife. But afore issue betweene them, the homage shal be made in both their names. But if the wife decease before homage made by the husbande in the wiues life, and the husbande holdeth himselfe in as tenaunt by the curtesie, he shal make no homage vnto

his lord, for that hee hath then none estate but for terme of life, More shalbee said of homage in the tenure of homage auncestrel.

¶ Fealtie.

Fealtye is as much to saye as fidelitas in latine, and when a franketenaunt shall make fealtie vnto the Lorde, hee shal holde his right hand vpon a booke, and shal say thus.

Heare you this my lord, that I vnto you shal be faithfull and true, and beare you faith for ỳ lands or tenements that I claime to holde of you, and truely to you shal do the customes & seruices ỳ I ought to do vnto you at termes assigned, as God me helpe & al his saintes, & then he kissed the booke, But hee shall not kneele when he maketh his fealty, nor shal make such h̄ble reuerence as is aforesaid in homage. And great diuersitie there is had betweene making of fealtie, and of homage. For homage may not be made but to the lord himselfe. But the steward of the Lordes court, or the baylife may take fealtie for the lord.

¶ Also tenaunt for terme of life shall make fealtie, & yet hee shal make none homage, and diuers other diuersities there be betweene homage & fealtie.

¶ Also a man may see a good note, Anno 15. E. 3. where and how a man and hys wyfe made homage & fealtie in the common banke whiche is written in suche fourme. Note

that

that John Lewknor and Elizabeth his wife made homage vnto William Thorpe in this manner. The one & ẏ other held iointlye their hands betweene the hands of Williā Thorpe & the husband said in this wise, wee vnto you make homage, and beare you faith for ẏ lands that wee holde of A. your conusour whiche hath graunted you our seruices in B. & en C= & the other townes &c. against al men (sauing the faith that wee owe vnto our Soueraigne Lord the king, and to his heires, and to our other Lords) and the one and the other kissed him. And after they made fealtie, and the one and the other helde their handes togither vpō a booke, and the husband saide the woordes, and both kissed the booke, more shalbee saide of fealtie in the tenure of socage, and in the tenure of franke almoigne, and in the tenure of homage auncestrell.

¶ Escuage.

Escuage is called in latine Scutagium, ẏ is to say seruice of shield. And such a tenāt that holdeth his lande by escuage, holdeth by knightes seruice. And also it is cōmonly sayd that some holde by a fee of knyghtes seruice, & some by the halfe fee of knightes seruice &c. And it is said ẏ when the king maketh a voiage royal into Scotlād for to subdu ẏ Scots hee that holdeth by a fee of knightes seruice, behoueth to be with the king by xl. daies wel and conuenably arrayed for the warre. And

likewise he that holdeth his land by the halfe of a fee by knightes seruice, ought to bee with the king by xx. daies, And he that holdeth his land by the fourth part of a fee by knightes seruice, him behoueth to be with the king by x. daies. And so after the quantitie, hee that hath more, to do more, & hee that hath lesse to do lesse. But it appeareth by the pleas & arguments made in a good plee vppon a writte of Detinue of an obligatiō brought by one Hēry Gray Mich. 7. E. 3. that it nedeth not to him that holdeth by escuage to goe himselfe if hee will finde an able person for the warre conuenable arrayed for the warre, to goe wyth the kinge, and that seemeth good reason. For it maye bee that hee that holdeth by suche seruice is sicke, in such wise that he may not goe nor ride.

And also an Abbot or any other man of religion, or a woman sole that holdeth by suche seruice, ought not in such case to go in proper person. And sir William Herle ỳ time chiefe Iustice of the common place, sayde in the said plee, that escuage shall not bee graunted but where the king himselfe goeth in proper person. And so it abode in iudgement of the same plee if these xl. daies shall bee accompted from the day of the muster of the kings heste made by the commons & by the kings commaundement: Or els from the day that the king first entreth into Scotlande &c. therefore enquire of this matter.

¶ And after such voyage into Scotlande it

it is commonly said that by the authoritie of Parliament, the escuage shalbe set and put in certaine, that is to saye, a certayne somme of of money how muche euery one that holdeth by a whole fee of knights seruice which was not in his own proper person, nor none other for him which the king, shall paye vnto the Lorde of whom hee holdeth his lande by escuage. As put case that it was ordeyned by authoritie of parliament that euery one that holdeth by a whole fee by knightes seruyce which was not with the king, shal pay to his Lord xl.s. Then he that holdeth by the halfe of a fee by knightes seruice, shall paye vnto his Lorde but xx.s. and to who more more: and who lesse lesse. And some tenaunts hold, that if escuage runne by authority of parliament to any summe of mony, that they shall paye but the halfe of that summe, and some but the fowerth part of that summe. But because the escuage that they shal pay is not certaine, for that it is at no certain what the parliament wil asselle the escuage, they holde by knightes seruice. But otherwise it is of escuage certaine of which shal bee spoken of in the tenure of socage.

And if a man speake generallye of Escuage, it shalbee vnderstoode by the common speache of Escuage not certaine, which is knightes seruice. And such escuage draweth vnto him homage, and homage draweth vnto him fealtie, for fealty is incident to euery manner of seruice, but to the tenure of frank-

frankalmoigne as it shalbe sayde hereafter in te tenure of frankalmoigne. So as he that holdeth by escuage, holdeth by homage, fealty, and escuage.

¶ And it is to be vnderstoode, that when escuage is so sessed by authoritie of Parliamēt, euery Lord of whom the landes is holden by escuage, shall haue the escuage so sessed by the Parliament, because it is vnderstoode by the lawe that at the beginninge suche tenements were geuen by the lords to hold by such seruices to defende their Lordes as well as the kinge, and to set in quiet & rest their Lordes and the kinge of Scottes afore sayde. And for that such tenements came first of the Lordes, it is reason that they haue ꝑ escuage of their tenaunts.

¶ And the Lordes in suche case maye dystraine for the escuage so assessed, or they may haue the kynges writtes directed vnto the Shirifes of the shires to leue suche escuage for them, as it appeareth by the Register fol. 88.

¶ But of such tenauntes that holde of the king by escuage which were not with ꝑ king in Scotland, the king himselfe shall haue the escuage.

¶ Item in such case afore sayde, where the kinge maketh a voyage royal into Scotland, and the escuage is assessed by parliamt, if the Lorde distraine hys tenaunt that holdeth of him by seruice of a whole knightes fee, for the escuage so assessed &c. And the tenant pleadeth

and

and will auerre that he was with the king in Scotland &c. by xl. dayes, and the Lorde will auerre the contrarie, it is ſaide that it ſhall bee tried by the certificacion of ỳ Marſhall of the kings hoſt in writing vnder his ſeale whiche ſhalbe ſent to the Juſtices.

¶ Homage, fealtie, and eſcuage.

TEnure by homage, fealtie, & eſcuage, is to hold by knights ſeruice, & it draweth vnto it warde, mariage and reliefe. For when ſuch a tenaunt dyeth, his heire male being within age of xxi. yeres, the Lord ſhal haue the lād holden of him vnto the age of the heire of xxi. yeres, which is called plain or full age, for that ſuch an heire by the vnderſtanding of ỳ lawe, is not able to do knights ſeruice before ỳ age of xxi. yere.

¶ And alſo if ſuch an heire bee not maried at the time of the death of hys auncetter, then the Lorde ſhal haue the warde and mariage of him. But if ſuch a tenaunt dye, his heyre female beeinge of the age of fouretene yeres or more, then the Lord ſhal not haue the ward neither of the lande nor of the bodie, for that a woman of ſuch age may haue an huſband able to do knightes ſeruice. But if ſuch an heire female be within the age of fouretene yeres & not maryed at the tyme of the death of her auncetter, then the Lord ſhall haue the

ward

warde of the lande holden of him, till the age of ſuche an heire female of 16. yeres. For that it is geuen by the ſtatute of Weſt. 1. capitul. 12 that by two yeres next folowinge the ſayde 14. yeres, the Lorde maye tender a conuenient mariage wout diſperaginge of ſuche an heire female. And if the lorde do not tender her ſuch mariage within the ſaid two yeares, then ſhee at the end of the ſaid two yeares maye enter and put out the Lorde. But if ſuch an heire female be maried within the age of 14. yeres in the life of the auncetter, and the auncestor die, ſhe being within the age of 14. yeres, the lord ſhal haue but the ward of the land til an ende of 14. yeres of age of ſuch an heire female: and then her huſband and ſhee may enter into the land and put out the Lorde, for this is out of the caſe of the ſtatute. In ſo much ẏ the lord cannot tender mariage to her that is married &c. For before the ſaid eſtatute of Weſtm. 1. ſuch iſſue female that was within age of 14. yeares at ẏ time of the death of her auncetter, and after that ſhe had accompliſhed the age of foureteene yeares without anye tender of mariage to her by the Lorde, ſuche an heire female then myghte enter into the lande and put out the Lorde as it appeareth by the rehearſall ' and by the wordes of the ſame eſtatute. So that the ſaid ſtatute was made in ſuche caſe all for the aduauntage of the Lorde as it ſeemeth. But yet that at all tymes it is vnderſtoode by the wordes of the

ſame

ſame eſtatute, that the Lorde ſhall not haue the two yere after the xiiij. yere is as it is afore ſaid.

¶ And note well that the full age of the male and female after the common ſpeach, is ſaid the age of xxi. And the age of diſcretyon is ſaide the age of xiiii. yeares, for a childe at ſuch age which is wedded within ſuch age to a woman, may agree to the mariage or diſagree.

¶ And if the wardeine in chiualry marie once in his ward within ỳ age of xiiii. yeare, & after the age of xiiii. yeares he diſagreeth to ỳ mariage. It is ſaid by ſome folke that the childe is not holden by the lawe to be maryed an other time by his wardeyne, for that the wardeine had once the mariage of him, and therefore he was not of his ward as cõcerning the ward of his body. And when hee had once the mariage of him, and therefore was out of his ward, he ſhal no more haue the mariage of him. In the ſame maner it is if the wardeine marye him and the wife die the childe being within age of xiiij. yeares, or xxi. yeres. And that the childe may diſagree to ſuch mariage whẽ he cõmeth to thage of xiiij. yere is proued by the wordes of the ſtatute of Merton cap. 6. that ſaith thus. De dominis qui maritauerint illos quos habent in cuſtodia ſua villanis, & alijs ſicut burgenſis vbi diſparagent', ſi tales homines fuerint infra 14 annos, & talis ętatis quod matrimonio conſentire non poſſint,

poſſint, tunc ſi parentes illius cõquerant' domin' ille amittat cuſtodiam illã vſque ad etatem heredis. Et omne commodum quod inde receptũ fuerit cõuertatur in cõmodũ heredis infra etatem exiſtentis ſecundũ diſpoſitionem parentũ, propter dedecus ei impoſitũ. Si autẽ fuerit 14. annorũ & vltra quod conſentire poterit, & tali maritagio conſenſerit, nulla ſequatur pena. And ſo it is proued by the ſame ſtatute that no diſperagement ſhalbe, but where that he that hath the ward marieth him within the age of xiiij. yere

¶ Alſo it hath bene a queſtion howe theſe wordes ſhoulde bee vnderſtande. Si parentes conquerantur &c. And it ſeemeth vnto ſome that conſidering the ſtatute of Magna charta Cap. 6. that willeth that heredes marientur abſque diſparagatione &c. vpõ which this ſaid ſtatute of Merton vpon this point is grounded as it ſemeth, and in ſo much that it was neuer ſeene that any action was brought vpõ the ſtatute of Merton for ſuch deſperaginge againſt the wardeine, and if any action maye bee taken vpon ſuch matter, it ſhalbe taken by common preſumption before this time, or at ſome time to be put in vre, that theſe wordes ſhalbe vnderſtoode in ſuch manner. Si parentes conquerantur 1. Si parentes inter ſe lamentantur, Which is as much to ſaye, that yf the cosins of ſuch a childe haue cauſe to make lamentation and complaine amonge them for the ſhame done to their cosin ſo diſperaged

which

which is in a maner a shame to them al, then may the next cosin to whom the heritage may not discend, enter and put out the wardeine in chiualry. And if hee will not, another cosin of the childes may do it, & hee to take the issues and profites vnto the vse of the childe and of that yeeld the childe accompt when hee commeth vnto his full age. Or els the childe him age may enter himselfe & put out the wardein &c. sed quere de hoc.

¶ Also there are many other diuers disperaginges, which be not specified in the same estatute. As if the heire that is in ward be maried vnto one that hath but one foote, or one hande, or els deformed, or lame, or hauing an horrible disease, or els a great and continuall infirmitie, or if the heire male bee maried to a woman passed childe bearing. And manye other causes of disperaging there bee, but inquire for them, for it is good matter to learne. And of heires males that bee within age of xxi. yeres after ỳ death of their auncesters vnmaried. In such case the Lord shal haue the maryage of such an heire: and haue space and tyme to tender to hym conuenable maryage without disperaging within the same time of xxi. yeare.

¶ And it is to witte, that the heyre in such case maye choose yf hee will bee maryed or no. But if the Lorde whych is called wardeine in Chiualrie tender a conuenable maryage to suche an heire wyth-

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in the age of xxi, yeare without disperaginge and the heire refuse, and marrye not himselfe within the same age. Then the saide Warden shal haue the value of the marriage of suche an heire, But if such an heire male marry himselfe within the age of xxi. yeares, against the will of the Warden in chiualrye: Then shall the Warden haue double the value of the mariage by the force of the estatute of Mercō aforesaid as in the same statute is more fullye comprised.

¶ And diuers teaunts hold of their Lordes by knightes seruice, and yet they hold not by escuage, nor pay no escuage as they that hold their landes by castleward, that is to saye, to kæpe a towre of a castle, or a gayle, or some other place by reasonable warning, when their lords heare tel that enimies wil come, or bee come into England. And in many other cases a man may hold by knightes seruice, and yet he holdeth not by escuage, nor paieth no escuage as shalbe saide in the tenure of Graunde sertantie. But in al cases where a man holdeth by knightes seruice, such seruices drawe to the Lord ward, and mariage.

¶ And if a tenant that holdeth of his lord by seruice of an whole knightes fee dye, his heire being of ful age of xxi yeere, his heire shal pay vnto his lord C s. for a relefe, & he that holdeth by the halfe fee, shal pay l. s.

¶ Also if a man hold his lande of his Lorde by the seruice of two knightes fees, then the heire

heire at full age at the time of the death of his auncester, shall pay to his lord ten pounde for relefe.

¶ Also if there be grandfather, mother, & sonne, and the mother dieth lyuing the father of the sonne, and after the grandfather which held his land by knightes seruice dyeth seised and the land descendeth to the sonne of ỳ mother, as heire to the grandfather which is within age. In such case the lord shal haue ỳ ward of the land, but not the ward of ỳ heire, for that none shalbe in ward of his body lyuing his father, because the father during his life, shal haue the mariage of his heire apparant, & not the Lord. Otherwise it is if ỳ father be dead liuing the mother, where ỳ lande holden in chiualrie, descendeth to the sonne on the fathers side &c.

¶ Also if a man be seised of land which is holden by knightes seruice, & maketh a feoffement in fee to his vse, and dyed seised of ỳ vse his heire within age, and no will by him declared, the Lord shall haue a writte of right, of the body and the land, like as if the tenant had died seised of the demeine, And if ỳ heire be of ful age at the death of his auncester, in such a case hee shal paye relefe like as if hee had bene seised of the demeine. and that is by the statute of An. 4. H. cap. 17.

¶ Also there is a wardē in right in chiualry, & a warden indede in chiualry. wardē in right in chiualry, is where the Lord because of his

lordship is seised of the warde of the land, & heire vt supra, wardeine in dæde in chiualrie is where the Lord in such case after his seisin grannteth by dæde or without dæd the ward of the land or of the heire, or of both, to another man, by force of which graunt the grantee is in possession, then is the graunte called wardeine in dæde &c.

¶ Tenure in socage.

TEnure in socage, is where the tenant holdeth of his Lord his tenaunce by certaine seruice for all maner of seruice, so that the seruice be not knightes seruice. As where a man holdeth his land of his Lord by fealtye and certaine rent for all manner of seruice, or elswhere a man holdeth his lande by homage, fealtie, and certaine rent, for all manner of seruices, for homage by yt selfe maketh not knightes seruice.

Also a man may hold of his Lord onely by fealty, and such tenure is tenure in socage, for euery tenure that is not tenure in chiualry, is tenure in socage. And it is said that the cause wherefore such tenure is sayde and hath the name of tenure in socage, is thus. Quia hoc socag, idē est, quod seruic soce. Et hęc soca soce idē est qd caruca s. one sok or one plough land: and in old time before ỳ limitatiō of time in mind

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great part of the tenauntes that held of their Lordes by socage, ought to come with their plowes euery of the said tenaunts by certaine dates in the yere, to eare and sowe the Lordes lands of his owne graines. But for that such workes were done for the ayde and sustenaunce of their Lordes, they were acquyted against their Lord of al maner of seruices. And for this that such seruice was done with their plowes, such tenure was called tenure in Socage. And after ỳ such seruices were chaunged in diuers other manner seruices by consent of the tenauntes, and by the desire of their Lordes, that is to say, into a yerely rent et. But yet the name of socage abydeth, and in diuers places tenauntes yet doe such seruice with their plowes vnto their Lorde, so that al maner of seruices that dœ not tenure by knightes seruice bee called tenures in socage.

¶ Also if a man hold of his Lord by escuage certains. That is to say in such forme, that when escuage runneth and is assessed by the Parliamẽt to a more summe or to a lesse summe, that the tenaunt shall pay to the Lorde but halfe a marke for escuage, and neither more ne lesse, to how great summe or little summe ỳ the escuage runneth in this case, because the escuage is in certaine before that any escuage is assessed et. Such tenure is tenure in Socage and not knightes seruice. But where the

ſumme that the tenant ſhal pay for eſcuage, is not certaine, that is to ſay, where it maye be that the ſumme that the tenant ſhall paye for eſcuage may be at one time more and another leſſe, after that it is aſſeſſed &c. thē ſuch tenure is tenure by knights ſeruice.

¶ Alſo if a man hold his land for to pay certaine rent to his Lord for caſtleward, ſuch tenure is tenure in ſocage. But where the tenant himſelfe ought by him or by any other to make caſtleward, ſuch is tenure by knights ſeruice.

¶ Alſo in al caſes where the tenant holdeth of his lord to pay to him any certaine rēt, that rent is called reut ſeruice.

¶ Alſo in ſuch tenures in ſocage if the tenant haue iſſue and die, his iſſue being within the age of 14. yeres, then the next frend of ỹ heire to whom the heritage may not deſcende ſhall haue the warde of the lande, and of the heire vnto the age of the heire of 14. yeres, and ſuch wardeine is called wardeine in ſocage. For if land diſcend to the heire by the fathers ſide, then the mother or ſome other nighe coſin of the mothers ſide ſhall haue the ward. And if land diſcend to the heire by the mothers ſide thē the father or the next frend of the fathers ſide ſhall haue the ward of ſuch landes or tenements. And when the heire commeth to the age of 14. yeres complete, he may enter & put out his wardeine in Socage, and occupie the land himſelfe if he wil. And ſuch wardeine

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ſocage ſhal take,no iſſues or profites of ſuche lands or tenements to his owne vſe,but only to the vſe and profite of the heire, and of that ſhal yelde account when it pleaſeth the heire after that the heire hath accompliſhed the age of foureteene yeres. But ſuch a warden vpon ſuch account ſhal haue allowaunce, of all his reaſonable coſtes and expenſes of al thinges. And if ſuch a warden marye the heire within age of foureteene yeres,he ſhal make accompt to the heire or to his executours of the value of the mariage,though hee toke nothinge for the value of the mariage,for that it ſhall be reted his owne follie,that he woulde marrye him without taking the value of the mariage ſythout hee marye him to ſuche a maryage that is worth in value as much as the mariage of the heire &c. Alſo if anye other man that is not a nigh frende &c.occuppe the landes and tenements of the heire as wardein in ſocage,hee ſhalbe compelled to yelde accompt vnto the heire,as well as his nexte freend. For it is no plee for hym in a writte of account to ſaye that hee is not his nygh frende &c. But hee ſhall anſwere whether hee occuppeth the landes or tenementes as warden in ſorage or not. But inquire if after that the heire haue accompliſhed the age of foureteene yeres,and the warden in ſocage continuallye occuppeth the lande till the heire commeth to full age of xxi. yeres. If the heire at his full age ſhall haue and accion of account againſte the warden for the tyme that he hath occupyed al-

ed after the said foureteene yeres, as againste his wardeine in socage, or against hym as against his baylie.

¶ Also if a wardein in chiualry make his executours, and dye, the heire beinge within age &c. The executors shall haue the warde, duryng the nonage. But if the wardeine in Socage make executoures and dye, the heire beeing within the age of foureteene yeares, his executours shal not haue the warde, but another nyghe frende to whome the heritage may not discende, shal haue the warde. And the cause of diuersitie is, for that the wardein in chiualrie hath the warde to his proper vse & the wardeine in Socage hath not the ward to his owne vse, but to the vse of the heire. And in such case, where ỳ wardein in socage dyeth before any such accompt made by him, the heire is of that without remedye, for the no writ of accompt lyeth against ỳ executors but onely for the king.

Also the Lord of whom the lande is holde in Socage after the death of his tenaunt, shall haue relefe in suche fourme. If the tenaunt holde by fealtye, and certaine rent to paye yearely &c. If the termes of payement bee to pay by two termes of the yeare, or by foure termes of the yeare, the Lorde shall haue of the heire of hys tenaunt, as much as the rent amounteth that hee shoulde paye by yeare. As if the tenaunt holde of the

Lord

Lord by fealty, and x. shillings of rent, payable at certaine termes in the yere, then ỳ heire shal pay to the lord x.s. for relefe aboue these x.s. that hee shal pay for the rent. Looke more in the statute of Anñ 19. Henrye the seauenth cap. 15.

And in such case after the death of the tenaunt, which relefe is due to the Lord incontinent of what age soeuer the heire bee, for ỳ suche a Lorde may not haue the warde of the body nor the lande of the heire. And the Lord in such case ought not to abyde the payement of hys relefe after the termes and dayes of payment of the rent. but he ought to haue his relefe incontinent. And therefore hee maye incontinent distraine after the death of his tenaunt for the relefe. In the same maner it is, where a tenaunt holdeth of his Lord by fealtie, and by a pound of Cummin, or a pound of Pepper by the yeare, & the tenant dy, the lord shal haue for his relefe a pound of Cummin or a pound of pepper.

In the same manner it is where the tenaunt holdeth to pay by yere a certaine number of Capons, or hens, or a payre of gloues or certaine bushels of wheate, and suche other manner of thing. But in some case the lorde ought to abide to distraine for his relefe til a certaine time.

As if the tenant holde of his Lord by a rose or by a bushel of roses to paye at the feaste of S. John Baptist. If such a tenaunt die in Winter, then the Lord may not distraine for

his relieke &c. vntill the time that the roses by the course of the yere maye haue their growinges &c. Et sic de similibus. Also if any peraduēture will aske why a man may not holde of his lord by fealty onely for al maner of seruices, in so much that whē ỳ tenant shal make his fealtie, he shal sweare to his lorde that he shal do all seruices due, and when hee hath made fealty in such case, there is none other seruice due. To this it may bee saide ỳ where the tenant holdeth his land of his lord, it behoueth that he ought to do to his Lord some manner of seruice, for if the tenaunt nor hys heires ought to do no maner of seruice to hys lord nor to his heire, then by long time continued it should bee out of remēbrance of whom the land was holden, of ỳ lord or of his heire or not, and then more oft and more sooner will men say that the land is not holdē of the lord nor of his heires, then otherwise: and vpon this the Lord shal lose his eschete of the land or percase other forfaiture or profite that he might haue of the land So it is reason that ỳ lord & his heires haue some seruice done vnto him for a proofe and a witnes that the land is holden of them, & therfore fealtty is incidēt to al maner tenures, except tenure in frankalmoigne as shalbe said in frankalmoigne, & because that the Lord wil not at ỳ beginning of the tenure haue any other seruices but fealty, it is reason that a man may hold of his Lord onely by fealtie, and when hee hath made his fealtie, he hath done al his seruice.

¶ Also

¶ Also if a man let to an other for terme of lyfe certayne landes or tenementes wythout speaking of anye thing to yeld to the lessors, yet he shall do to the lessour fealtie, for that hee holdeth of him. Also if a lease be made to a man for terme of yeres, it is said ỳ lessee shal do to the lessor fealty, for ỳ he holdeth of hym. And this is proued well by the wordes in a writ of waste when the lessour hath cause to bring a writ of waste against him, the whiche writ shall say that the lessee holdeth the tenements of the lessour for terme of yeres, So ỳ writ proueth a tenure betweene thē &c. but hee that is tenaunt at will after the course of the cōmon law, shal not make fealtye, because hee hath no maner of a sure estate. But otherwise it is of tenant after the custome of the maner, because ỳ he is boūd to do fealty to his lorde for two causes, one is because of custome, the other is because ỳ he taketh his estate in such fourme to do fealtie.

¶ Frankalmoigne.

TEnaunt in frankalmoigne is, where an Abbot or prior, or an other mā of religiō or of holy church, holdeth of his lord in frāk-almoigne, that is to say, in latin. In liberam elemosinam, that is to say, in free almes.

And such tenure began first in the old time when a man in olde time was seised of landes or tenementes in his demesne, as of fee, and of the

of the same lande enfeoffed an Abbot and hys couent, or priour and his couent, to haue and to holde of them and their successours in pure and perpetual almes, or in frankalmoigne, or by such wordes, to holde of the grauntour, or of the lessour and his heires in free almes. In such case the tenementes were holden in frankalmoigne, and in the same manner it is where the landes or tenementes were graunted in old time to a Deane and Chapter and to their successours, or to a person of a church, & to his successors, or to any other man of holy church & to his successors in free almes, if he had capacity to take such grauntes or feoffements &c. and such as holde in free almes, bee bound of right afore God to do orisons, prayers, & masses, & other diuine seruices for the soules of the grauntours or feoffours, or for ỳ soules of their heires which bee dead, and for the prosperitie and good lyfe of them that be a liue.

¶ And for this, they do at no time no manner of fealtie vnto their lords, for that such diuine seruice is better for thē before God, then any doing of fealty, and also these wordes free almes, or franke almoigne, exclude the Lord to haue any worldly or temporal seruice but onely to haue deuine and spectyal seruyce to be done for him &c. And if such that holde their tenementes in free almes, or franke almaigne will not, or fayle to doe suche dyuine seruice as it is saide, the Lorde maye not distraine them for the seruices vndone &c. because

cause it is not set in certayne, what seruice they ought to doe: but the Lord may of them complayne to their ordynary, prayng hym that hee wil sette punishment and correction of that. And also to prouide and see that such negligence be no more done, and the ordynary of right ought to do that &c.

¶ But where an Abbot or a prior holdeth of his Lord by certaine diuine seruice in certaine to bee done, as for to singe a masse euerye fryday in the weeke, for the soules &c. or euerye yeare at such a day to singe Placebo & Dirige &c. or to find a chaplein to singe masse &c. or to distribute in almes to an hundred poore men an hundred pence at such a day, in such case if such diuine seruice be not done the Lord may distraine &c. for that this dyuine seruice is in certaine by their tenure what the abbot or the priour ought to do. And in such case the lord shal haue the fealtie &c. as it seemeth.

And such tenure is not sayde tenure in free almes, but it is sayde tenure by dyuyne seruice, for in tenure in free almes, or franke almoigne, no mencion is made of anye manner certaine seruice, for none maye holde in free almes or franke almoigne if there bee expressed any manner certaine seruice that he ought to do.

¶ And if it be demaunded if the tenaunt in frankemariage shall doe fealtie to the donour or to his heires beefore the fourth degree be passed &c. It semeth that yea, for he is not

like

lye as to this intent to a tenaunte in frę almes or franke almoigne for that the tenant in frę almes shall do (because of his tenure) deuine seruice for the lord as it is aforesaid, and that he is charged to doo by the lawe of holye Church, and for that he is excused and discharged of fealtie. But tenant in franke mariage doth not by his tenure such seruice.

And if he do not to his Lord fealty, then he doth not to his Lorde any manner of seruyce neither spirituall nor temporall, which should bee an inconuenience and against reason, that a man should haue estate of inheritaunce of an other, and yet the lord shal haue no manner of seruice of him as it seemeth, and so it seemeth that hee shal do fealtie to his Lorde vntil the fourth degree be past &c. And when he hath done fealty, he hath done al his seruice. And if an Abbot holde of his Lord in frę almes, & the Abbot and his couent vnder their cõmon seale alien the same land to a seculer mã in fee simple, in this case the seculer man shall doe fealtie to the Lord for that hee may not holde of his Lord in frę almes, for if the lord ought not to haue of him fealtie, then hee shall haue of him no maner of seruice which shoulde bee an inconuenience where hee is Lorde, and the tenements are holden of him.

¶ Also if a mã grant at this day to an abbot or to a priour, landes or tenements in frę almes or franke almoigne, these woordes frę almes or franke almoigne bee voyde, for that

it is

it is ordeyned by the ſtatute whiche is called Quia emptores terrarum, whiche ſtatute was made Anno. 18. Regis E. primi. that no mā may alyen or graunt landes or tenementes in fee ſimple to hold of him ſelfe, ſo þ if a man be ſeiſed of certaine land or tenements which he holdeth of his Lord by knightes ſeruice & at his day he graunteth the ſame lande to an Abbot &c. in free almes or franke almoigne, þ Abbot ſhal holde immediately the ſame tenementes by knightes ſeruice of the lord of hys grauntour, becauſe of the ſame eſtatute: ſo þ no man may holde in fee almes or in franke almoigne, but if it be by title of preſcription, or by force of a grant made to ſome of his predeceſſours before the ſame ſtatute. But the king may giue landes or tenementes in fee ſimple to hold in fee almes or franke almoign or by other ſeruice, for he is out of the caſe of the ſtatute, and note well that noe man maye holde landes or tenements in fee almes, but of the grauntour or his heires, and that for þ priuitie of the gifte, and therefore it is ſayde that if there be lord meſne and tenaunt, & þ tenaunt is an Abbot that holdeth of his meſne in franke almoigne, if the meſne die wythout heire, then the meſnaltie ſhal come by eſchete to the ſaid Lord aboue, & the abbot then ſhall hold of him immediatly only by fealtie, & ſhall do him fealtie, for that he may not hold of him in franke almoigne &c.

¶ And note wel, where that ſuch a man of reli=

religion holdeth his lands of his Lord in free almes &c. his Lord is bound by the law to acquite him of euery manner of seruice that any lord aboue him wil demand or aske of ỹ same tenants. And if he acquite him not but suffer him to be distrained &c. then he shall haue against his lord a writte of mesne, and recouer his dāmages & costs of his suit.

¶ Homage auncestrel.

TEnure by homage auncestrel is, where a tenant holdeth his land of his lord by homage, and the same tenant and his auncesters whole heire he is, haue helde the same lande of the said Lord and of his auncesters, whose heire the lord is, from time out of mind by homage, & haue doē homage vnto him which is called homage auncestrel because of the continuance which hath bene by title of prescription in the tenancie, in the bloud of the tenant & also in the lordship in the bloud of the lord. And such seruice by homage auncestrel draweth to it warrantie, if the Lorde that is aliue hath receaued homage of such tenaunt, he ought to warrant his tenant when hee is impleded of the lands holden of him by homage auncestrel. And also such seruice by homage auncestrel draweth to it acquitaunce, that is to saye, the Lord ought to acquite his tenaunt against al other lordes aboue him of euerie maner of seruice. And it is saide that if such tenaunt bee impleded by Precipe quod reddat

reddat &c. and he voucheth his Lord to warranty, which cōmeth in by processe, and asketh of the tenaunt what he hath to bind him to warrantie, and hee sheweth how hee and hys auncesters whose heire he is, haue holden the lande of the voychee and of his auncesters whose heire he is, by homage from time out of mind: if the Lord which is vouched receiueth none homage of the tenant, nor of any of hys auncesters, the Lord then if he wil, may disclayme in the Lordship, and so put out his tenaunt of his warranty. But if the lord which is vouched hath receiued homage of the tenāt or of any of his auncesters, then may hee not disclaime, but he is bound by the law to warrant the tenant, and then if the tenaunt leese the lande in defaut of the vouchee, hee shal recouer in value against the vouchee of ẏ landes or tenements that the vouchee had at the time of the vocher or any time after. And it is to wit that in euerye case where the Lorde may disclaime in his Lordship by the law, in court of record, and of that will disclaime his seigniourie is extinct, and the tenaunt shal holde of his Lord next aboue the Lorde which so disclaimeth. But if an Abbot or Priour bee vouched by force of hōage aūcestrel &c. though hee haue neuer taken homage &c. yet hee cannot disclaime in this case nor in no other case, for they cannot deuest that thing in fee which hath bene vested in their house, Pasche. 10. E quarti

¶ Also

¶ Also if a mā that holdeth his land by homage auncestrel alieneth his land to an other in fee, the alienee shal doe homage to his lord But he holdeth not of his Lorde by homage auncestrel for that ỳ tenauncie was not continued in the bloud of the auncestours of ỳ alienee, nor the alienee shal neuer haue ỳ warrāty of his land of his Lord, for that the continuance of the tenauncie in the tenant and in his bloud by the alenation is discontinued, & so see that the tenaunt that holdeth his lande by homage auncestrel of the Lorde, and suche a tenaunt alieneth in fee, though that hee take estate of the alienee againe in fee, hee holdeth the land by homage, but not by homage auncestrel.

¶ Also it is said, that if a man hold his lād of his Lord by homage and fealtie, & he hath made homage and fealtie vnto his lord, and ỳ lord hath issue a sonne, and dieth, and the lordship discēdeth to his sone. In this case the tenaunt which did homage to the father, shall not do homage to the sonne, for that when a tenaunt hath made once homage to his Lord, he is excused for terme de his life to make homage to any other heire of the lorde. But yet he shal do fealtie to the sonne and heire of his Lorde, though that he made fealtie to his father.

¶ Also if the lord after the homage to him made by his tenaunt, graunt the seruice of his tenaunt by deede vnto another in fee, and the

tenaunt

tenant attorneth &c. the tenaunt shall not bee compelled to do homage but he shal do fealtye though he did fealty before to the grantor, for fealty is incident to euery attournemēt when the lordship is graunted. But if a man be seised of a manour, and another man holdeth his land of him as of the manour aforesaid by homage, the which hath done homage to his lord which is seised of the manour, if after that a stranger bring a Precipe quod reddat against the lord of the manour and recouereth the manour against him and sueth execution &c. in this case the tenant shal once againe doe homage to him that recouereth the manour, for that the state of him which receiued homage before is defeated by the recouery. And it shal not lie in the mouth of the tenant to falsify or defeate the recouery which was against hys Lord, & so see the diuersitie in this case where a man cōmeth to his lordship by recouery, and where he commeth by discent or grant of the seignioury.

¶ And if a man tenant which ought by his tenure to do homage to his Lord come to hys lord and say to him, sir, I owe to do vnto you homage for the tenements that I hold of you and I am redy to do you homage for the same tenements for the which I pray you that ye wil now receiue it, and if the Lord then refuse to receiue it, then after such refusall the Lord may not distraine the tenaunt for the homage before that the Lord require the tenant to doe

homage and the tenant refuſe to do it.

¶ Alſo a man may hold his land by homage auncestrel, & by eſcuage, or by other knightes ſeruice, as wel as he might hold his lande by homage auncestrel in Socage.

¶ Graund ſergeantie.

TEnure by graund ſergeantie is, where a man holdeth his lands or tenemēts of our ſoueraigne Lord ỳ king by the ſeruice which he ought to do in his owne proper perſon, as to beare the kings banner or his ſpeare, or to lead his hoſt, or to be his marſhal, or to beare hi s ſword before him at his coronation, or to be his ſewer at his coronation, or his keruer, or butler, or to be one of his Chamberleines of his reſceit of his Eſchequer, or to do ſuch ſeruices &c. and the cauſe wherefore ſuch ſeruice is called graund ſergeantie, is for that it is more honorable, & worſhipful, & digne, then is ỳ ſeruice of ỳ tenure by eſcuage, for he that holdeth by eſcuage, is not limitted by his tenure to do any more eſpeciall ſeruice then any other that holdeth by eſcuage ought to do: but he ỳ holdeth by graund ſergeantie, ought to do ſome eſpeciall ſeruice to the king, that he ỳ holdeth by eſcuage ought not to do.

¶ Alſo if the tenaunt which holdeth by eſcuage die, his heire beeing of full age, if he helde by knightes fee, the one heire ſhall paye but an C.s. for his reliefe, as is ordeined by the ſtatute of Mag. chart cap. 2. but he ỳ holdeth

deth of the king by graunde sergeantye and dyeth his heire being of ful age, shal paye vnto the king for his reliefe, the value of hys lands or tenements by the yere, beside ẏ charges and reprises which he holdeth of the king by graund sergeantie. And it is to wit, that serieantie in latine is seruitium, and of magna seriantia is magnum seruitium, that is to say, a great seruice.

¶ Also those which holde by escuage ought to do their seruice out of the realme, but they that holde by graund sergeantie for the moste part ought to doe their seruice within the realme.

¶ Also it is said ẏ in the marches of Scotland some hold of the king by cornage, that is to say, to blowe an horne for to warne the mē of the cōtrey &c. when they heare ẏ ẏ Scots or other enimies wil come or enter into England &c. which seruice is graund sergeantye &c. but if any tenaunt hold of any other Lorde thē of the king by such seruice of cornage, that is not graund sergeanty, but it is knights seruice, and draweth to it warde, mariage, & reliefe, for none may hold by graund sergeantie but of the king onely.

¶ Also a man may see in the xi. yere of Hēry the fourth that Cokein then beeinge chyefe baron of Theschequer came into the common place bringing with him a copie of a record in these woordes. Talis tenet tantam tertam de domino Rege per Seriantiam ad inueniendū

Vnum hominē ad guerram infra quatuor maria ꝛc. That isto saye, ſuch a man holdeth ſo much land of our ſoueraigne lozd the king by ſergeantie to finde one man appointed foz the warre within the foure ſeas, & he demanded whether it was graund ſerieanty oz pety ſergeantie, & Hank then ſaid that it was graund ſergeanty, foz that it was ſeruice to be done by the bodie of a man, & if that he may not finde a mā to do the ſeruice foz him, he muſt do it him ſelfe. To whom the other iuſtices aſſented, Cokein thē ſaid, the tenāt in this caſe ſhal pay reliefe to the value of the land by yeare, to the which was none anſwere. & note that al they that hold of the king by graūd ſergeanty, hold of the king by knightes ſeruice, and the king of that ſhal haue ward, mariage, & reliefe, but ꝑ king ſhal not haue of them eſcuage, if they hold not by eſcuage.

¶ Pety ſergeanty.

TEnaunt by petit ſergeantie is where a manne holdeth his land of our ſoueraigne Lozde the kinge by yælde vnto him yearely a Bowe, a ſwozde a dagger, oz a knyfe, oz a ſpere, oz a paire of gloues of Mayle, oz a paire of ſpurs gilt, oz an arrowe, oz diuers arrowes to yeelde ſuch other ſmall thinges touchinge the warre, and ſuch ſeruice is but ſocage in effect, foz that that the tenaunt by his tenure ought not to goe noz to doe anye thing in his

owne

owne proper person touching the warre. But to yelde and pay yerely certaine thinges vnto the king, as a man ought to pay a rent. And note that no man holdeth land by graund sergeauntie nor by petite sergeauntie, but of the king.

¶ Burgage.

TEnure in Burgage is where an auncient Borough is, of the which the king is lord, and they that haue tenements within the borough holde of the king their tenements, that euery tenaunt for his tenement ought to paye to the king a certaine rent by yeare &c. And such tenure is but tenure in socage, and the same maner is where an other lorde spirituall or temporall is Lord of such a Borough, and the tenauntes of the tenementes in such a borough hold of their Lorde to pay eche of them yerely an annuel rent, & it is called tenure in Burgage, for that the tenementes within the borough be holden of the lord of the borough by certaine rent &c. And it is to wit that the auncient Townes called Boroughes bee the moste auncient and eldest Townes that bee within England, for the townes that now be cities or countries, in olde time were boroughs and called boroughs, for of such olde townes called boroughs came these Burgesses of the Parliament to the parliament whē the kinge hath summoned his Parliament.

¶ Also for the greater part such boroughes haue diuers customes and vsages which bee not had in other Townes, for some borough hath such a custome, that if a man haue issue many sonnes and dyeth, the yongest sōne shal inherite al the tenements which were his fathers within the same borough as heire vnto his father, by force of the custome, the whiche is called borough English.

¶ Also in some boroughs by the custome, the wife shal haue for her dower al the tenemēts which were the husbands.

¶ Also in some borough by ẏ custome, a man may deuise by his testament his lāds and tenements which hee hath in fee simple within the same borough at ẏ time of his death, & by force of such deuise he to whom such deuise is made after the death of the deuisour, may enter into ẏ tenements to hym deuised, to haue and to hold to him after the fourme and effect of ẏ deuise without any liuery of seisin thereof to be made to him.

¶ Also though a man maye not graunt nor giue his tenements to his wife duringe the conuerture, for that that his wife & he bee but one person in the law, yet by such custome hee may deuise by his testament hys tenementes to his wife to haue and to holde to her in fee simple, or in fee tayle, or for terme of life, or of yeeres, for ẏ such deuise taketh none effect, but after the death of the deuisor. And if a man at diuers times make diuers tenaments and di-

uers

uers deuises &c. yet the last deuise & wil made by him, shal stand and abide.

¶ Also by such custome a man may deuise by his testament that his executours may alyen and sel the tenements that he hath in fee simple for a certaine summe, to distribute for the soule, in this case though the deuisour die seised of the tenements, and the tenements dyscend vnto his heire, yet the executors after ỳ death of the testatour may sell the tenements so deuised, & put out the heire, & thereof make a feoffement, alienation, and estate by deede or without deede, to them whō the sale is made vnto.

¶ And so may ye see here a case where a man may make a lawfull estate, and yet hee hath nought in the tenements at the tyme of the estate made, and the cause is for that, that the custome and vsage is such. Quia consuetudo ex certa causa rationabili vsitata, priuat cōmunē legem. For a custome vsed vpon a certaine reasonable cause, barreth ỳ common law. And note well, no custome is to be allowed, but such custom as hath bin vsed by title of prescription, that is to say, from time whereof is no minde. But diuers opinions haue beene of time out of mind, & of title of p̄scriptiō which is al one in ỳ law, for some men haue said that the time of mind shoulde bee saide for time of limittation in a writte of right, that is to say, from the time of king Richard the first after the Conquest, as is geeuen by the statute of

Westminster the first, for that a writ of ryght is the most highest writte in his nature that may be. And in such a writ a man maye recouer his right of the possession of his auncesters of the most auncient time that ane man may by any writ by the law. And in so much that is giuen by the saide estatute, that in such a writ none shalbe heard to aske of ỳ seisson of his auncestors of more longer time thē of the time of King Richard aforesaide, therfore this is proued that continuance of possession or other customes and vsages vsed after the same time is title of prescription, and this is certaine. And other haue saide that well and truth it is, that seisin and continuaunce after the limitation &c. is a title of prescription as aforesayde, and by the cause aforesaid. But they haue saide that there is also an other title of prescription that was at the common law before any estatute of limitation of writes &c. and that it was where a custome or vsage or other thing had bene vsed for time wherof mind of man runneth not to the contrarie, and they haue saide ỳ thys is proued by the pleading where a mā will plede a title of prescription of custome &c. he shall say that such custome hath bene vsed from tyme wherof the memory of men runneth not to ỳ contrarie, that is as much to say, when such a matter is pleded that no man then aliue hath heard one prowe to the contrary, nor hathe no knowledge to the contrarie, and in so much ỳ such title of prescription was at the common

law

lawe and not put out by any estatute. Ergo it abideth as it was at the common lawe, and ꝑ soner in so much that the said limitation of a writ of right &c. is of so long time passed.

Idee quere de hoc, & many other customes & vsages haue such auncient boroughs.

¶ Also euerye boroughe is a towne, but not the contrarie, more shal be said of customes in the tenure of villenage.

¶ Villenage.

TEnure in villenage is most properly whē a villein holdeth of his Lord (to whom he is villeine) certaine landes & tenementes after the custome and manner, or els at the will of his Lorde, and to do his villeine seruice, as to beare, bring, and carie out, the dounge and filth of the Lord vnto ꝑ land of his lord, there to lay it, cast it, and spreade it abroad vpon the land, and to do such other manner of seruice, & some frē tenauntes hold their tenements after the custome of certaine mannours by such seruice, & their tenure is called tenure in villenage, & yet they be no villaines, for no land holden by villenage or villeine lands, or anye custome vsing of the land, shall neuer make a frē mā villein. But a villein maye make frē lād to be villein lād vnto his lord, as if a villein purchase land in fee simple or in fee taile, the Lord of the villeine may enter into ꝑ land & put out the villein & his heires for euer, and after

after the lord (if he wil) may let the same land to the villein, to holde in villenage.

¶ Also if a feoffemẽt be made to a certain person or persons in fee, to the vse of a villaine, or if a villeine or any other persons bee enfeoffed to the vse of a villeine, what estate soeuer the villein hath in the vse, in fee taile, for terme of life, or yeares, the lord of the villein may enter in al those landes and tenements lykewyse as if the villeine had bene alone seysed of the demesne. And that is by the statute of Anñ 19. H. 7. ca. 15. But if a free man wil take any lãds or tenements of his lord by such villein seruice, that is to say, to pay a fine to his lord for his mariage, or for ỳ mariage of his sonne or his daughter, then shal hee paye such a fine for the mariage &c. for that it is the follye, of such a free man to take in such fourme lands or tenementes to holde of hys Lorde by such bondage, yet that maketh not the free manne villaine.

¶ Also euery villaine, either he is villeyne by prescription, that is to say, he and his auncestors haue bene villaines time out of mind, or he is villeine by his own confessiõ in court of record. But if a free man haue diuers issues, and after confesseth himselfe to be villein to another in court of Recorde, yet his issues which he hath before the confessiõ be free, but the issue which he shall haue after ỳ confession &c. shalbe villaines.

¶ Also if a villaine purchase lands and alie-

neth

neth the same lāds to another before his lord enter, then the lord may not enter, for it shalbe iudged his own folly that he entred not whē the land was in the villeines hands. And so it is of his other goods, for if the villaine buy & sell, or giue goods to another before that the lord seised the goods, then the Lorde may not seisē thē, but if the lord before any such sale or gift commeth within the house of the villeine where such goods be, & there openly amōg the neighbours claime the same goods to be hys, and so seise parcel of the same in name of seysin of all the goods &c. This is saide a good seisin in the law. And the occupation that the villein hath after such claime in ỳ goods, shall be taken in the lawe, the right of the Lord. But if the king haue anye villeine that purchaseth landes & alieneth before that the king enter, yet the king maye enter in the lande in whose handes the land commeth to. Or if the villein buy or sell dyuers goods before that the kinge seise the goodes, yet the kynge may seise them in whose handes soeuer they bee. Quia nullum tempus occurrit regi, for no tyme renneth against the king.

¶ Also if a manne let lande to an other for terme of life, sauing the reuersion to him, and a villaine purchaseth of the lessour the reuersion, in this case it seemeth that the Lord of the villayne may incontinent come to the lande and clayme the same reuersion as Lorde of the same villayne, and by this clayme, the

the reuersion is incontinent in him, for in any other forme he may not come to the reuersion for he may not enter vpon the tenāt for terme of lyfe, and if he ought to auoide till after the death of the tenaunt for terme of life, thē happely he might come to late. for peraduenture ỳ villayne wyll graunt or aiyen it an other in the life of the tenaunt for terme of life. In the same maner it is where a villaine purchaseth the auowson of a Church ful of an incumbēt, that the Lorde of the villayne maye come to the said Churche and clayme the auowson. And by this claime the auowson is in him, for if he abyde til after the death of the incūbent and then present his clerke to the saide Church: Then in the meane time the villainr might alien the auowson &c. & so put out the Lord from his presentation.

¶ Also there is a villaine regardant & a villaine in grosse. Villayne regardant is as if a mā be seised of a manour to which a villein is regardant, and he that is seised of the sayde mannour, or they whose estate he hath in the same manour haue bene seised of the said villein & of his auncestors as villaines regardāt, to the manour from time out of minde. And villein in grosse is where a man is seised of a manour to the which a villeine is regardant, he graunteth the same villein by his dede vnto an other, thē he is villein in grosse, and not regardant.

¶ Also if a manne and his auncestours whose

whose heire he is, haue bene seised of a villaine land of his auncestours as villaynes in grosse tyme out of minde, suche bene villaynes in grosse. And note wel that of such thinges which may not be graunted nor alyened wythout deede, or fyne, a man that will haue such thinges by prescription maye not otherwise prescribe but in him and hys auncesters whose heire he is, and not by these wordes, in him and in those whose estate hee hath, for that that he may not haue their estate without deede or writing the which behoueth to be shewed to the court if he wil haue anye aduauntage of this, & because that the graunt and the alienation of a villaine lyeth not without deede or other writing: a man maye not prescribe in a villaine in grosse without shewing of writing, but in himself that claimeth the villaine and his auncesters whose heire hee is. But of those thinges which bee regardaunt or appendant to a mannour or to other landes or tenementes, a manne may prescribe that he and they whose estate hee hath were seised of the manour or of such landes or tenementes as regardauntes or appendauntes to the manour or to such landes or tenementes &c. from time out of mynde, and the cause is for this that such a mannour, lands and tenements maye passe by alienation without deede &c. And it is to wit that nothing is named regardaunt to a mannour but a villayne. But certaine other thynges as auowsons and

commune

commune of pasture &c. be named appendants to the mannour or to other landes and tenements.

¶ Also if a man in court of Record knowledge himselfe to bee villeine that neuer was villeyne beefore, suche one is villeyne in grosse.

¶ Also a man that is villeine is called villeine and a woman that is villeine is called niefe, and a man that is outlawed is called an outlaw, & a woman that is outlawed is called a wayue.

¶ Also if a villein take a free woma̅ to wife, the issue betweene them shalbee villeine. But if a niefe take a free man to husbande, their issue shalbe free. And that is contrary to ỳ law ciuile, for there he saith that partus sequitur ventrem.

¶ Also no bastard may be villeine, but if that he will knowledge himselfe to be a villeine in court of record, for he is in the law quasi nullius filius, as the sonne of no man, for that he may be inheritour to no man.

¶ Also euery villaine is able and free to sue al manner of actions against euery person except against his Lord to whom he is villeine and yet in certaine thinges hee maye haue against his lord an action of appelle for the death of his father, or of his other auncesters whose heire he is, also a niefe which is rauished by her lord may haue appele of rape against him.

¶ Also

¶ Also if a villeine be made executour to another, and the Lord of the villeine was indebted to the testatour in a certaine summe of money the which is not paied, in this case the villaine as executour to ỹ testatour shall haue an actiõ of debt against his lord because hee shal not recouer the det to his proper vse, but to the vse of the testatour.

¶ Also the Lord may not take of the possession of such a villeine that is executour of the deads goods, and if he do, the villeine as executour shal haue an action of Trespasse against his Lord for the same goods so taken, and recouer dammages to the vse of the testatour. But in all these cases it behoueth the lord (which is defendant in such actions) to make protestatiõ that the plaintife is his villeine, or els the villeyne shalbe enfraunchised though the matter be foũd for the lord against the villeine, as it is said.

¶ Also if a villeine sue an accion of Trespasse or other accion against his Lorde in one shire, and the Lorde saieth that hee shall not bee aunswered, for that he is villeyne regardaunt to his Mannour in an other Shire, and the plaintife sayeth that hee is franke and of free estate and no villeine, this shall be tryed in the Shire where the plaintife hath concepued his accion. and not in the shire where the Mannour is, and this is in fauour of liberty, as it is aiudged. M. xl. E. 3.

And

And for this cause was made a statute in the ix. yere of R. the second, ỹ tenure of which ensueth in such forme.

¶ Also for that where manye villaines and neues as wel of great Lords as of other folke spiritual and temporal, flee and go into cities and places fraunchised as the citie of London and other like places, and faine diuers suites against their Lords because they would make thẽselues to be enfraunchised, it is accorded & auented that the Lords nor none other shalbe forbarred of their villaynes because of their aunswere in the law. By force of which statute if any villaine wil sue any manner of action to his owne vse in any shire where it is hard to trie &c. against his Lorde, his Lorde may chose to plede ỹ the plaintife is his villaine, or to plede another matter in barre, and if they be at issue and the issue bee founde for the Lord, then ỹ villaine is villain as he was before by force of the same statute. But if the issue bee found for the villeine, then is the villain franke and free for that the lord tooke not for his plee that the villaine was his villaine, but tooke it by protestation.

¶ Also the Lorde maye not mayme hys villaine, for if he mayme his villayne hee shall of that be indicted at the kings suite. And if hee be of that attainted, he shall for that make grieuous fine and raunsome to the king. But it seemeth that the villain shal not haue by ỹ

law

lawe any appelle of mayme against his Lord, for in appelle of mayme a manne shall not recouer but his dammages. And if the villaine in that case recouer dammages agaynst his Lorde, and hath thereof execution, the Lord may take that that the villaine hath in execution from the villaine, and so the recouery stãdeth boyde.

¶ Also if the villaine be demaũdãt in an action real or plaintife in an action parsonall against his lord, if the lord wil plede in disability of his person, he may not make plaine defence, but he shal defend but the wronge & the force, and demaunde iudgement if hee shall bee aunswered and shew his matter by & by how he is villaine & demaund iudgement if he shal be answered.

¶ Also sixe manner of men there be against whom if they sue actions &c. iudgement may bee asked if they shalbee answered. One is where the villaine sueth an action &c. against his lord, as in case aforesaide. The seconde is where a man outlawed vppon an action of Dette or trespas or vpon any other action or indictment, the tenaunt or the defendant may shew all the matter of the record and the outlawry, & demaund iudgement if he shalbe aũswered because that hee is out of the lawe to sue any action during the time that he is outlawed. The thirde is where an alyen borne out of the allegeaunce of our soueraigne lord the kinge, if such alyen sue any action real or per-

perſonal, the tenāt or defendant may ſay that he was borne out of the kings allegeance, & aſke iudgement if he ſhalbe aunſwered. The fourth is, where a man by iudgement geuen againſt him vpon a writ of Premunire facias &c. is out of the kings protection, if he ſue any accion, and the tenaunt or defendaunt ſhew all the record againſt him, he may aſke iudgemēt if he ſhalbe anſwered: for the law & the kinges writtes, bee the thinges by which a man is protected & holpen, & ſo during ỳ time ỳ a man in ſuch caſe is out of the kings protection, hee is out of helpe & protection by the kings law or by the kings writ.

¶ The fift is, where a man is entred and profeſſed into religion, if ſuch a perſon ſue an accion, the tenant or defendant may ſhew that ſuch a one is ētred into religion in ſuch a place into the order of Saint Benet, and is there a monke profeſſed, or in the order of fryers mynours or preachers, and is there a fryer profeſſed, and ſo of other orders of religion &c. & aſke iudgement if he ſhalbe aunſwered, & the cauſe is this, that when a man entreth into religion and is profeſſed, he is dead in ỳ law, and his ſonne or next coſin incontinent ſhall inherite him aſ well as though hee were dead in deede, and when he entreth into religion, he may make his teſtament & his executours, & they may haue an accion of debt due to him before his entre into religion, or any other action that executours may haue if he were dead

in deed

in dæde. And if he make none executors whē he entreth into religion, then ꝑ ordinary may commit the administration of his goods to other as if he were deade in deede. The first is where a man is accursed by the lawe of holie Church, and he sueth an action real or personal, the tenant or defendaunt may pleade that he that sueth, is accursed, & of this it behoueth him to shewe the Bishops letters vnder his seale, witnessing the accusing, and aske iudgement if he shalbe answered &c. but in this case if the defendaunt or pleintife cannot deny it. the writte shall not abate, but the iudgement shalbe that the tenaunt or defendaunt shal go quite without day, for this, that when the demaundant or pleintife hath purchased his letters of absolution, & shewed them to the court he may haue a resommons or a reattachment vppon his originall after the nature of his writ &c. But in the other cases the writ shall abate &c. If the matter shewed may not be gayneſaide.

Also if a villein be made a seculer preist, yet his lord may seise him as his villein, & seise his goods &c. But it seemeth ꝑ if the villein enter into religion & is professed &c. that ꝑ lord may not take him nor seise him for ꝑ he is deade in the law. And no more then if a free man take a neife to his wife ꝑ lord may not take ne seise the wife of ꝑ husband, But his remedy is to haue an action against the husband, for that he tooke his niese to wife without his will

and so may the Lord haue an accion againste thy soueraigne of the house that taketh & admitteth his villain to be possessed of the same house without license, and will of his Lorde &c. and shall recouer his dammages to the value of the villaine, for he ỳ is professed monke &c. shalbe a monke, and as a monke shalbe taken for terme of his life natural, except he be derayned by the law of holy Church, and he is holden by his religion to keepe his cloister, and if the lord may take him out of the house, then he should not liue as a dead person, nor after his religiō, which should be inconuenient &c. For if there be wardeine in chiualrie of body and landes of a childe within age, if the child whē he cōmeth to the age of xiiij. yeeres enter into religion & is professed, the wardeine hath none other remedy as to the warde of ỳ bodye, but a writte of Rauishment of warde against the soueraigne of the house. And if any being of full age that is cosin & heire vnto the childe enter into the lande, the wardeine hath no remedie as to the warde of the lande, because that the entre of the heire of the child is lawful in such case.

¶ Also in many diuers cases the Lorde may make manumission and infraunchising to hys villaine. Manumission is properly when the Lord maketh his dede to his villeine to enfraunchise him by this word Manumittere, which is as much to say, as extra manū, & extra potestatē alterius ponere, as to put hī out of the

of the handes and the power of another. And for this that by such a deede the villein is put out of the hand & power of the Lord, it is called manumission. And so euery manner of enfranchising made to a villeine, maye bee sayde o manumission. Also if the Lord make to hys villeine an obligation for a certaine summe of money, or graunt vnto him by his deede an annuity, or let him by his deede, landes or tenementes, for terme of yeares, the villaine is enfraunchised. And if the Lord make a feoffement to hys villeyne of any landes or tenementes by deede or without deede in fee simple or fee taile, or for terme of yeeres and deliuereth vnto him the seisin, this is an enfraunchisinge, But if the Lorde make to him a lease or landes or tenementes, to holde at the wil of the Lorde, by deede or without deede, this is no infrañchising, for that he hath no maner of certaintie nor suerty of his estate, but that the Lorde may put him out when he will. Also if a Lorde sue against his villain a Precipe qd reddat, if he recouer or be nonsuit after appearance, this is a manumission, for this that hee maye lawfully enter into the lande without such suit. In the same maner it is if he sue against his villaine an accion of Debt, or of accompt, or of couenaunt, or of tresspasse, or such other, this is an infraunchising &c. for this that he maye enprison his villaine, & take his goods without such suit. But if the Lorde sue his villeine by appeale of felonie, thys is

none enfraunchising to the villein though the matter of the appel is found against the Lord, because that the lord may not haue the villein hanged without such suit. But if the villeine were not endited of the same felony before the appeale sued against him, & is acquited of the felony, so ỳ he recouer dammages against the Lord for the false appeale. Thē in this case ỳ villein is enfraunchised because of the iudgement of dammages that was giuen to him against his Lord. And more cases and matters there be by ỳ which a villein may be enfraunchised against his lord. Sed de illis quere.

Also if a lord of a mānour wil prescribe ỳ it hath bene accustomed within hys mannour, time out of minde that euery tenant within ỳ same manour that marieth his daughter to any man wout licence of the Lord of ỳ manour shal make fine to the Lord for the time being, this prescription is voide, for none ought to make such fines but onely villaines, for euery free man may freely mary his daughter to whom it pleaseth him and his daughter. And because that this prescriptiō is against reasō, such prescription is voyd. But in the shire of Kent of lands holden in gauelking where by the custome vsed time out of minde ỳ childzen males ought euenly to enherite, this custome is allowable, for this ỳ it is with some reason, because that euery sonne is as great a gētleman as the elder sonne, and because of that more great honour and valure shall grow thē

if hee

if he had nothing by his auncestours, where peraduentner he might not so grow &c.
Also where by custome called borough Englesh, in some borough ỳ yongest sonne shal inherite al the tenements &c. This custome also standeth with reason, because that the yonger sõne if he lack father & mother (because of his yõg age) may leaft of al his brethrẽ help him selfe &c. But if a mã wil prescribe ỳ if any cattell were vpon ỳ demesnes of his maner there doing dãmage, ỳ the lord of the manor for the tyme being hath vsed to distraine thẽ and the distres to retain til fine were made to him for the dãmages at his will, this prescription is void, because it is against reason ỳ if wrõg be done to a man, ỳ he thereof should be his own iudge, for by such way if he had dãmages but to ỳ value of an halfe peny, hee might assesse & haue therfore an C.li. which should be against al reason, & so such prescription or anye other prescription vsed if it be against al reason, this ought not nor wil not be allowed before iudges, quia malus vsus abolendus est.

¶ Rentes

THree manner of rents there be, that is to say, rent seruice, rent charge, & rent secke, rent seruice is, where a man holdeth his land of his lord by fealty and certaine rent, or by other seruice, and certaine rent.
¶ Or by homage, fealtie, and certaine rent.

And if rent ſeruice at any day that it ought to be paid be behinde, the Lord may diſtraine for that of cõmon right. And if a man nowe will geue landes or tenements to another in the tayle, yelding to him certaine rent by yere, he of common right may diſtrain for the rent behinde, though that ſuch gift was made without a dæde, becauſe that ſuch rent is rent ſeruice, but in ſuch caſe where a man vpon ſuch a gift or leaſe, will reſerue to him rent ſeruice, it behœueth that the reuerſion of the landes and tenements be in the donour, or in the leſſour, for if a man will make a feoffement in fee or will giue landes in the taile, the remaynder ouer in fee ſimple without a dæde, reſeruing to him certaine rent, ſuche reſeruinge is void, becauſe ỳ no reuerſion is in the donour, and ſuch a tenaunt holdeth his land immediately of the Lord of whom his donour helde. And this is by force of the eſtatut of weſtm̃ 3 Cap. 1. quia emptores terrarum. For before ỳ ſame eſtatute, if one made a feoffement in fee ſimple by dæde or without dæde, yeldinge to him and to his heires, certaine rent, this was rent ſeruice, and for this hee might diſtreine of cõmon right. And if he made no reſeruatiõ of any rent, nor of any ſeruice, yet the feoffee held of the feoffour by ſuche ſeruyce as the feoffour held ouer of his lord next aboue. But if a mã by dæd indẽted at this day, make ſuch a gift in the tayle, the remainder ouer in fee &c. or feoffement in fee, and by the ſame inden-

ture

ture reserueth to him and to his heires, a certeine rent, and that if the rent be behinde, that it shalbe lawful to him & to his heires to distreine &c. such rent is rent charge, because such lands and tenements be charged of such dystresse by force of the writing onelye, and not of cõmõ right. And if such a mã in such a dede indented, reserue to him and to his heires certein rẽt without any such clause set or put in the dæde, that he may distraine &c. that suche rent is rent secke, because that he cannot dystrayne to haue the rent if it bee denyed by the same distresse, & if he were neuer seised in this case of the rent, he is without remedy as shall be said hereafter. Also if a man seised of certaine land grant by his dæde Polle, or by endenture, a perely rent issuing out of the same lande to another in fee simple or in fee tayle, or for terme of life &c. with clause of distresse, &c. then that is rent charge, & if it be without clause of distresse, then it is rent secke, and note well, that rent secke Idẽ est quod redditus siccus, bæcause that no distresse is incidẽt to it. Also if a man graunt by his dæde rent charge to another, & ỳ rent is behind, ỳ grauntee may chose if he wil sue a writ of Annuity of it against the grauntour, or distraine for the rent behind, and the distresse to withhold till he bee of that paid. But hee may not doe and haue both together, for if he take a writte of Annuity, thẽ ỳ land is discharged. And if hee sue not a writ of Annuity, but distrayne for ỳ arrera-

arrerages, & the tenant sueth a replegiare &c. & the graunte allo weth the taking of the distresse in the land &c. in court of record, then is the land charged, & the person of the graūtour discharged of an accion of Annuity.

¶ Also if a mā wil that another shal haue a rent charge issuing out of his landes, but he wil not that his person shalbe charged in any manner by a writte of annuitye, then he may haue such a clause in the end of his deede. Prouiso semper quod presens scriptū, nec aliquid in eo specificatum, nō aliqualiter se extendat ad onerandū personam meam per breue de annuali redditu. Sed tantūmodo ad onerandū terram & tenemēta predē, de annuali redditu prædē. And thē is the land charged, & the person of the grauntour discharged.

¶ Also if a mā make such a deed in such maner, ỳ if A. of B. be not yerely paid at the feast of Christmas for terme of life of xx. s. of lawful money, ỳ then it shalbe lawful to the saydt A. of B. to distraine for it in the mannour of F. &c. this is a good rent charge, because that the manour is charged of the rent by way of distresse. And yet the person himselfe ỳ made such a dede is discharged in this case of an actiō of annuity, because that he granted not by his deede any annuity to the said A. of B. but graunted onely that he may distraine for his annuity.

¶ Also if a man haue a rent charge to hym and to his heires issuinge out of certain land, if he

if hee purchase any parcel of the lande to him and to his heires, all the rentes is extinct and annulled because that rent charge may not in such māner be apportioned, but if a man that hath rent seruice purchase parcel of the lande whereof the rent is, hys shall not extinct all, but for the portiō, for that rent seruice in such case may be apportioned and shalbe apprcyoned after the value of the lande, but if a tenaunt holde his lande by seruice to yelde to his Lord yerely at such a feast an hoyse, or an hauke or suche thinge semblable, if in suche case the Lord purchase parcel of the lande, the seruice is gone, because that such seruice may not be seuered nor apportioned, but if a man holde his land of another by homage, fealtye, and escuage, and by certaine rent, if the Lorde purchase parcel of the lande &c. In that the rent shalbe apportioned as is aforesayde, but yet in this case the homage and fealtie abideth whole to the Lord, for the Lorde shall haue the homage and fealtie of hys tenaunt for the remenant of landes and tenementes holden of him as he had before &c. for this that suche seruices be no annuel seruices, and maye not be apportioned. But the escuage may and shal be apportioned after the quantity and rate of the land.

¶ Also if a man haue a rent charge, and hys father purchaseth parcel of the tenemts charged in fee, and dyeth, and that parcel discendeth to his sonne ỳ hath the rent charge, nowe this

this rent charge shalbe appoꝛcioned after the value of the land, as is afoꝛesaid of rẽt seruice bycause that suche a poꝛcion of the land purchased by the father, commeth not to the sõne by his owne dæde, but by discent and course of the law.

¶ Also if there be Loꝛde and tenant, and the tenant holdeth of his Loꝛd by fealty and certaine rent, and the loꝛd graunteth the rent by his dæde to another &c. reseruing to him the fealtie, and the tenant attourneth to the grauntee of the rent, now such rent is rent seck to ꝑ grauntee, foꝛ this that the tenementes bee not holden of the grauntee of the rent, but be holden of the Loꝛd that receiueth to him fealtye. And in the same maner it is, where a mã holdeth his land by homage, fealtie, and certayne rent, if the loꝛd graunt the rent, sauing to him the homage, such rent after such grant is rent secke, but where landes oꝛ tenementes bene holden by homage, fealtie, and certaine rent, if the Loꝛd will graunt the homage of his land by his dæde to another, sauing to him the remenant of the seruices, and the tenant atturneth to him after the fourme of the graunte, nowe in this case the tenant holdeth his land of the graunt: and the Loꝛd that graunth the homage, shal not haue but the rent as rent secke, and shal neuer distraine foꝛ the rent foꝛ this, that neither homage, noꝛ fealtie, noꝛ escuage may be said secke, foꝛ he ꝑ hath oꝛ ought to haue of his tenaunt homage, oꝛ fealtie, and

escuage

eſcuage may of common right diſtraine for it yf it be behynde, for homage, fealtie, & eſcuage bene ſeruices by which lands and tenements be holden, and bene ſuch that in maner may be taken but as ſeruices. But otherwiſe is of rent that was once rent ſeruice, for this that whē it is ſeuered &c. by the graunt of the lord frō the other ſeruices, it may not be ſaid rent ſeruice for this ỳ it hath not to it fealty which is incident to euery maner of rent ſeruice, and for this it is ſaid rent ſecke.

¶ Alſo if a man let land to another for terme of life, reſeruinge to him certaine rent, if hee graunt the rent to another ſauing to him the reuerſion of the land ſo letten by his dēde &c. ſuch rent is but rent ſecke, for this that the grauntee hath nothinge in the reuerſion of the land. But if he grant the reuerſion of the land to another for terme of life, and the tenant attourneth &c. then hath the grauntee the rent as rent ſeruice, becauſe hee hath the reuerſion for terme of life. And it is to bee vnderſtode that if a man gaue landes or tenementes in the taile, reſeruing to him and to his heires certaine rent, or let land for terme of life reſeruing certaine rent, if hee graunt the reuerſion to another, and the tenaunt attourneth, al the rent and ſeruice paſſeth by the worde of the graunt of reuerſion for this that all the rent and ſeruice in ſuch caſe bee incidents to the reuerſion and paſſe by the graunt of reuerſion. But though he graunt the rent to another

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the reuersion palleth not by such graunt &c. And so note well the diuersitie. And so it is holden Palche 12. E.4. But it is adiudged An.xxvi.lib.Ass. where as the seruices of the tenant in taile were graunted, that that was a good graunt, yet notwithstanding the reuersion remaynes.

¶ Also if there be Lord, meine, and tenant, and the tenant holdeth of the meine by ỳ rent of fiue shillinges, and the meine holdeth ouer by twelue pence, if the lord aboue purchase ỳ tenaunce in fee, then the seruice of the meinalty is extinct, for this, that whē the lord aboue hath the tenauncie, hee holdeth of the Lorde next aboue him. And if hee ought to holde it of him that was meine, then hee should holde one selfe tenaunce immediately of diuers Lordes which shoulde bee inconuenient, and the law will sooner suffer a mischiefe then an inconuenience, and for this the seigniourie of the meinalty is extinct. But in so much that the tenant held of the meine by fiue shillings, and the meine held but by xij.d. so that he had more aduantage by iiij.s. then he paied to his Lorde, hee shall haue the sayd iiij.s. as a rent secke yearely of the Lord that purchaseth the tenauncie.

¶ Also if a man that hath rent secke is once seysed of any parcell of the rent, and after if the tenaunt will not paye the rent is behynde, this is hys remedie. It behoueth him to goe by him selfe, or by another,

to the

to the landes and tenementes, whereof the rent is issuing, and there to demaund the arrerages of the rent. And if the tenaunt denye to pay it, this denying is a disseysin of ỳ rent. Also if the tenaunt at the tyme dꝛe not readie to pay it, this is a denying and a disseysin. Also, if the tenaunt nor none other be dwelling vppon the landes or tenementes when he alleth the arrerages &c. thys is a denying in law, and a disseysin in deed, and of such disseisins he may haue an accion of Nouel disseisin against the tenaunt, and recouer the seysin of the rent, and the arrerages, and hys dammages and costes of his writ and of hys plee &c. And if after such recouerie the rent dꝛe another time denied him, then he shal haue a redisseisin and recouer double dammages. And it is to be had in minde that this name Assise is Equiuocum. For sometime it is taken for a Jurie, for in the beginning of the record of assise of Nouel disseisin, the recorde shall begin thus. (Assisa venit recognit') which is to say, ỳ iuratores ven recogn, and the cause is for this, that by the writ of Assise is commaunded to the sherife Quod faciat xii. liberos & legales homines de vicineto &c. videre tenementum illud, & nomina eorum imbreuiari, & qd summone eos per bonos summone qd sint corum Iustitiarijs &c. parati inde facere recognitionem &c. And for this, ỳ by force of suche an original writte, a Pannel by force of the same writ ought to dꝛe retourned &c. It is

saide

ſayd in the beginning of the recorde in aſſiſe. Aſſiſa venit recogn. &c. Alſo in a writ of right it is commonly ſaid, that the tenaunt may put him in god & in the great aſſiſe &c. Alſo there is a writ in the Regeſter, called De magna aſſiſa eligenda, ſo is this a good proofe that this name aſſiſe, ſometime is put for the Jurie, and ſometime it is taken for al the writte of aſſiſe, and after that entent it is moſte properly and moſt commonly taken, as aſſiſe of Nouel diſſeiſin is taken for all the writ of aſſiſe of Nouel diſſeiſin. In the ſame maner aſſiſe of cõmon of paſture is takẽ for al the writ of aſſiſe of cõmon of paſture, & aſſiſe of Mordaunceſtr̃, and aſſiſe of Darreine preſẽtemẽt &c. But it ſeemeth that the cauſe why ſuch writtes at the beginning were called aſſiſes, is for this, that by euery ſuch writ it is commaunded to the ſheriffe þ he ſummon xii. &c. which is as much to ſay, that he ought to ſũmon a Jury &c. and ſometyme aſſiſe is taken for an ordynaunce, for to ſet certayne thinges in a certaine rule and diſpoſition, as an ordynance that is entred in the auncient eſtatutes is called Aſſiſa panis & ſeruicie. Alſo if there bee Lord and tenaunt, and the Lorde graunteth the rent of his tenaunt by deede to another, ſauing to him the other ſeruices, and the tenaunt attourneth, that is a rent ſecke as yt is afore ſayde. But if ther rent be denyed him at the next day of payment, he hath no remedy for this that he had not thereof any poſſeſſiõ.

But

But if the tenant when he attourneth to the grauntee, or after, wil geue a peny or an halfe peny to the grauntee in ỳ name of a seisin of rēt, then if after at the next day of paiment ỳ rent be denyed him, hee shall haue an assise of Nouel disseisin, and so it is if a man graunt by his deede a yearely rent issuing out of his land to an other &c. If the grauntour then after pay to the grauntee i. d. or an halfe peny in ỳ name of seisin of the rent, then if after the first day of payment the rent be denied, the grauntee may haue an assise, or els not. Also of rēt seek a mā may haue an assise of Mordaunceſter, or a writ of Ayel or Cosinage, and all other maner of actions reals, as the case lyeth, as he may haue of any other rent.

Also there be three causes of disseisin of rēt seruice, that is to say, rescous, repleuin, & enclosure. Rescous, is when the lord distreineth in the land holden of him for his rent behind, if the distresse be rescued frō him, or the Lorde come vpon the land, and would distrayne, and the tenaunt or an other man will not suffer him &c. Repleuin is when the lord hath distrained, and repleuin is made of the distresse by writt or by plaint &c. Enclosure is if the landes and tenements be so enclosed, that the Lord may not come within the lande and tenementes for to distraine, and the cause why such things so done bee disseisins made to the Lord, is for this, ỳ by such things the lorde is disturbed of the meane by which hee ought to

haue come to his rēt. And fower cauſes be of diſſeiſin of rent charg, that is to ſay, reſcous, replenin, re loſnre, and denyer, for denying is a diſſeiſin of rent charge as it is afore ſaide of rent ſecke, & two cauſes be of diſſeiſin of rent ſecke, that is to ſay, encloſure, and denyer, and yet it ſeemeth that there is an other cauſe of diſſeiſin of al the thre rents afore ſaid, that is when the lord is going to the land holden of him for to diſtraine for the rent being behind, the tenāt hearing this, encoūtreth him & foreſtalleth him the way with force and armes & manaſſeth him in ſuch forme that he dare not come to the land for to diſtraine for his rēt behind &c. for doubt of death, or bodely hurt, this is a diſſeiſin, for this that the lord is diſturbed of the meane whereby hee ought to come to his rent, and ſo it is if by ſuch foreſtalling and manalling hee that hath rent charge or rent ſecke is foreſtalled, or dare not come to ỳ land to aſke the rent behind.

¶ The third booke.

¶ Parceners.

PArceners bee in two manners, that is to ſaye, parceners after the courſe of the common lawe, & parceners after the cuſtome. Parceners after the courſe of the common lawe, be, where a man or a woman is ſeiſed of certaine land or tenementes in fee ſimple or fee taile & hath none iſſue but daughters & dyeth and

and the tenements discend to the daughters & the daughters enter into the lands & tenemẽts so to them discended then they bee called parceners & bee but one heire to their auncester, & they be called parceners for this, ỳ by the writ that is called Breue de participatione faciẽda the lawe will constrayne them ỳ participation shalbe made among them, & if there be iij. daughters to whom the land discendeth then they be called two parceners, and if they be iij daughters they be called three parceners, and fower daughters fower parceners, & so forth. and if a man seysed of lands, in fee simple or in fee taile die without issue of his bodie, and the tenements discend to his sisters they be parceners as is aforesaid. In the same manner it is where he hath no sisters but the land discẽdeth to his auntes, they be parceners, but if a man haue but one daughter shee may not bee sayde parcener, but daughter and heire. And it is to wete ỳ partition betwene parceners may bee made in diuers maners, one is when they agree to make partition and make partition of the tenementes, as if their bee two parceners to deuyde betwene thẽ the tenemẽts in two partes euery part by himselfe in seuetalty of euen value, and if there be three parceners to deuyde the tenements in three partes in seueralty another partitiõ there is to chose by agreement betwene them & certein of their friends to make ỳ partition betweene thẽ of ỳ lands and tenements in the fourme aforesaid.

And in such cases after such partition the eldest daughter shal chose first one of the parts so deuyded which shee will haue for her part. And then the second daughter after her another part &c. if it so be that there be many sistors &c. If it be not that they be otherwise agreed betweene them, for it may be agreed betweene them that one of them shall haue such tenementes and an other such tenements &c. without any such first election and the parte that the elder sister hath is called in latine Enitia pars, but if the parcenars agree that the elder sister shall make partition of the tenementes in the fourme aforesaide, and if she do then it is said that the elder sister shall chose the laste part after eche of her other sisters.

Another partition and allotting there is, as if there be foure parceners, & after such partition made of the lands euery part of the lande is by it selfe written in a little scrow, and it is couered al in ware in a maner of a litle ball so that no man may see the scrowle, thē are ỳ foure balles of ware put in a bonet to keepe in the handes of an indifferent man, and then the elder daughter first shal put her hand in ỳ bonet which shal take a balle of ware and the scrowe within the same ball for her purparty, and then the second sister shal put her hand in ỳ bonet & shal take another, & so thē the thirde sister the third ball &c. and in this case it behoueth eche of them to hold them to their chāce and allottement.

¶ Also another partition there is, as if there bee fower parceners, and they will not agree the partition shalbe made betweene them, then one of thē may haue a writ de participatione facienda against the other three sisters, or two may haue a writ of participatione facienda against the other, or ỳ three against ỳ fowerth at their election, and when iudgement shalbee geuen vpon such a writ, the iudgement shalbe such that partition shalbe made betweene ỳ parties, and the shiriffe in his proper person shall go to the landes and tenementes &c. and that he by the othe of xij. true men of his bayliwike &c. shall make partition betweene the parties, the one party of the same landes shall be assigned to ỳ plaintife or to one of ỳ plainetifes, & an other party to an other &c. not making mention in the iudgement of the eldest sister more then of the yongest, & of the partition that he hath thus done, he shall make notice to ỳ Iustices &c. vnder his seale and the seales of the xij. &c. and so in this case may you see that the elder sister shall not haue the first election &c. but the shirife shal assigne the part that she shal haue &c. & it may be that ỳ shiriffe will assigne ỳ first part to the yonger sister, & the last part to the elder.

And note wel partition by agrement betwene parceners may by the lawe be made amonge them as wel by worde without dede, as by dede.

¶ Also, if two meases discende to two par-

ceners and the one mese is worth by yeare xx. s. and the other but x. s. by yeare, in this case particion may be made betweene them in such fourme, ẏ the one parcener shall haue the one mese, and the other parcener shall haue the other mese, and shee that shall haue the mese of xx. s. and her heires shal pay a pearely rent of v. s. issuing out of the same mese to the other parcener, & to her heires for euer, because that euery of them shall haue the euen value, and such particion made, is good ynough, and the same parcener that shall haue the rent of v. s. and her heires may distrayne for the rente of common righte in the same mese of the value of xx. s. if ẏ rent of v. s. be behinde at any time in whose handes soeuer the same mese commeth, thoughe there was neuer wrytinge made of it betwene them. In the same maner it is of particion of al maner of lands and tenementes &c. where such rent is reserued to one, or to diuers parceners vppon such particion &c. but such rent is not rent seruice, but rent charge, of common ryght had and reserued for egalty of the particion. And note well that none bee called parceners by the common law but women or the heires of women, and which come by landes and tenements by discent, for if sisters purchase lands or tenemẽtz of these they bee called Joyntenants and not parceners. Also if two parceners of lande in fee simple make particion betweene them &c. and the parte of the one valueth much more

then

then the part of the other if they were at the tyme of partition of full age, that is to say, of xxi. yeeres, then they alway shal abide and neuer be defeated, but if the tenements whereof partition is made, bee to them in fee tayle, and the parte that the one hath is much better in yerely value then the part of the other, howbeit that they bee excluded during their liues to defeate the partition, yet if the parcener ỳ hath the lesser part in value hath issue and dieth, the issue may disagree to the partition, & enter and occupy in common that other parte that is allotted to her aunte, and so the aunte may enter & occupy in common the other part allotted to her sister, as if no partition thereof had bin made &c.

Also, if two parteners of tenements in fee take husbands, and they and their husbandes make partition betwene them, if the parte of ỳ one bee lesse in yerelye value then the parte of ỳ other, during the liues of the husbandes, the partition shalbe in his force and strength, yet after the death of the husbande the wife that hath ỳ lesse part may enter in her sisters parte as is afore saide, and defeate the partition, but if the partition so made betwene them weare such, that euery part at the time of allotement were egal of yerely value, then it may not after be defeated in such cases.

Also, if ther be two parteners and the yonger of them bee within the age of xxi. yeares, and partition is made betwene them, so tha thet

part that is allotted to the yonger, is lesse in value then the part of the other. In this case the yonger during the time of her nonage, & also when she cōmeth to ful age of xxj. yeares, may enter in the porcion to her sister allotted, &c. and defeate the partition, but such a parcener ought to take hede when she commeth to full age, that she ne take to her owne vse, all ỳ profits of the tenemēts to her allotted, for by that shee agreeth to the partition at such age, in which case the partition shal stande and abide in his force and strength &c. but peraduēture the profits of the halfe she may take, leauing the profits of the other halfe, to her sister &c. It is to weete, that when it is saide males and females be of full age, that shalbe vnderstanded of the age of xxi. ye e, for if any feoffement or graunt, release, confirmation, obligatyon, or any other writinge before any such age bee made by any of them &c. or that any within such age bee bayliffe or receiuer wyth anye man &c. all serueth for nought and maye bee auoided. Also a man before such age shall not bee sworne in no iurye nor no inquisition. Also if tenementes be geeuen to a man in the tayle which hath as much lande in fee simple, and hath issue two daughters & dieth, and the daughters, make partition betwene them, so that the lands in fee simple bee allotted to ỳ younger daughter in allowaunce of the tenements tayled, allotted to the elder daughter, if after such partition the yonger daughter a-

lyeneth

lyeneth the lād in fee ſimple to an other in fee, and hath iſſue a ſonne or a daughter & dyeth, the iſſue may enter in the tenements tayled, & them holde in purparty with their Aunt, and this is for two cauſes, one is for that, that the iſſue may haue no remedy of the land alyened by his mother, for that the lande was to her in fee ſimple, and in ſo much as hee is one of ỳ heires in the tayle, & hath nothing recompenced of that, that to him belongeth of the tenemēts tayled, it is reaſon that he haue his purpartye, of the lande in taile, and namely when ſuch particion maketh no diſcontinuāce of the taile, as ſhalbe ſaid hereafter in ỳ Chapiter of Diſcontinuance. But the contrary is holden M. 10. H. 6. that is to ſay, that they may not enter vpon the parcener ỳ hath his lande tayled, but is put to ſue his writ of Formedon.

An other caaſe is, for that, ỳ it ſhalbe counted the folly of the elder ſiſter, that ſhee would agree to the partition where ſhe myght haue had halfe the land in fee ſimple, and halfe of ỳ tenements in the tayle for purpartye, and ſo to bee ſure without dāmage &c. Alſo if a man ſeyſed in a ploughe lande by iuſt title, dyſſeyſeth an infant within age of an other ploughe lande, and hath iſſue two daughters, and dyeth ſeyſed of both thoſe plough lands, the infant then being within age, & the daughters enter & make partition, & the one ploughe land is allotted for ỳ purparty of the one, as percaſe to the yonger ſiſter in alloẅance of the other

ploughe

plough land which is allotted to the purpartie of the other, so that after the infant entreth in the ploughe lande of the which hæ was disseised vppon the possession of the parcener that hath the same ploughe lande, then the same parcener may enter into ỳ other ploughe lande that the sister hath and holdeth in parcenary with her, but if the ponger sister alien the same plough lande to an other in fee simple before the entre of the infant, and after the childe entreth vpon the possession of the alienee, then shee maye not enter into the other ploughe lande, for this that by her alyenation shæ hath vtterly dismissed her selfe to haue any parte of the tenementes as parcener, but if the ponger sister before the entre of the infaunt make thereof a lease for terme of yeres, or for terme of life, or in fee taile, sauing ỳ reuersion to her, and after the childe entreth, there peraduēture it is other wise, for this that she dismisseth not her selfe of all that, ỳ was in her, but hath reserued to her the reuersion & the fee simple &c.

¶ Also, if there bæ thræ or fower parceners that make partition betwene them, if the part of the one parcener be defeted by such lawful entry, she may enter and occupy ỳ other lands of all the other parceners, and compell them to make new partition of ỳ other landes bætwene them &c.

¶ Also, if there bæ two parceners, and the one taketh an husbande, and the husbande and the

the wife haue issue betwene them, & the wife dyeth, and the husband holdeth him in ỳ halle as tenaunt by the curteſie. In this caſe ỳ parcener ỳ ſuruiueth, & the tenant by the curteſie may wel make partition betwene thē &c. And if the tenāt by curteſie will not agree to make partition, then the parcener ỳ ſuruiueth, may haue a writ de participatione faciendā &c. and compel him to make partition. But if the tenant by ỳ curteſie wil haue partition betwene thē, and ỳ parcener ỳ ſuruiueth wil not haue it, then ỳ tenant by the curteſie ſhall haue no remedy for to haue partitiō, for he may not haue a writ de participatione faciendā, for this ỳ he is not parcener, for ſuch a writ lyeth for parceners al onely. And ſo may yee ſee ỳ the writ de participatione faciendā lieth againſt tenāts by the curteſie, and yet him ſelfe may not haue ſuch a writ.

¶ Parceners by the cuſtome.

PArceners by the cuſtome bee where a man ſeyſed in fee taile of the lands or tenements that bee of the tenure called Gauelkind with in ỳ ſhire of Kent, & hath iſſues diuers ſōnes and dyeth, ſuche landes and tenementes ſhall diſcende to all the ſonnes by the cuſtome, and they euenly ſhall enherite and make partition betweene them by the cuſtome as females doe, and a writ de participatione faciendā lieth in this caſe as betweene females, but it

it behoueth in the declaration to make mẽtion of the custome. Also such custome is in other places in England and also such custome is in North wales.

Also there is an other partition that is of an other nature, and in an other fourme then any of the partitions aforesaide, as a man seised of certaine landes in fee simple hath issue two daughters, and the elder is maryed, and the father geeueth parcell of the same landes to the husbande with his daughter in franke maryage, and dyeth seysed of the remnaunte the which remnaunt is of more greater value by yeare then bee the landes geuen in franke mariage.

¶ In this case the husbande and the wyfe shall haue nothinge for their part of the sayde remenaunt, but if they wil put in their landes geuen in franke mariage in hotchpot with the remenaunt of the lande with her sister, and if they wil not do so, then the ponger sister maye occupy the same remenaunt, and take to her the profites onelie, and it seemeth that this worde hotchpot is in Englishe a padding, for in such a puddinge is commonlye put not one onelye thinge, but one thinge with an other, and for this it behoueth in suche case to put the landes geuen in franke mariage with the other landes in hotchpot if the husbande and the wife wil haue any thinge in the other remenãt &c. This word hotchpot is but a terme of similitude, & is as much to say as to put the landes

lands geuen in franke mariage & other lands in fee simple &c. together, & this is to such entent to account the value of al the lands, that is to say, of ỳ lands geuen in frank mariage & the remnant that was not geuen, and then partition shalbe made in this fourme, that ensueth. As put case that a manne seysed of xxx. acres of lande in fee simple euerie acre in value xij. d'. by ỳ yere, which hath issue 2. daughters, and the one is couert baron, & the father giueth x. acres of the xxx. acres to the husband with his daughter in franke mariage & dyeth seised of the remnaunt, then the other sister shall enter in the remnaunt, that is to say, in the xx. acres, and shal occupye it to her owne vse, except the husband and the wife will put their x. acres geuen to them in franke maryage with the other xx. acres in hotchpot, that is to say, together, and then when the value is knowne of euery acre, that is to say, euerie acre is yearely worth xij. d. then the partition shalbe made in such forme, that is to say, that the husbande and the wife shall haue aboue the x. acres geuen to them in franke mariage b. acres in seueraltie of the xx. acres, and the other sister shall haue the remnaunt, that is xb. acres of the xx. acres for her part, so that accompting the x. acres that the husband and the wife had in franke marige, and the other b. acres of the xx. acres, the husband & ỳ wyfe haue as much in yerely value as ỳ other sister hath, & so alway vpō such partition the lands

geuen

geeuen in franke mariage abyde to the donors or to the heires &c. after ẏ forme of the gift &c. For if ẏ other parcener should haue nothig of this ẏ is geuen in frāk mariage, of this should follow an incōuenience & a thing against reason which the lawe will not suffer &c. and the cause why that lands geuen in frankemariage shalbe put in hotchpot is this, ẏ when a man geueth lands and tenements in franke mariage with his daughter or with his other cosin, it is to be vnderstood by the law that such gift made by such wordes franke maryage, is an adnaūcement of his daughter or of his cosin, & namely when the donour & his heires shall not haue any rent or seruice of him except fealtie vntil the fowerth degree be passed &c. and for such cause the lawe is that she shall haue nothinge of the other landes and tenementes dyscended to the other parceners &c. but if she will put the tenemēts geuen in frank mariage in hotchpot as is aforesaid, and if she wil not put the lands geuen in frank mariage in hotchpot, then she shall haue nothing in the remenāt, for this that it shalbe vnderstoode by the lawe that she is sufficiently aduaunced to which aduauncement shee agreeth & holdeth her content, and the same lawe is in this matter betwene the donees in frank mariage, and the other parceners as to put in hotchpot &c. the same lawe is betwoene the heires of the don s in franke maryage and the parceners &c. if the donees in franke mariage die before

their

their auncestors, or before such partition &c. as to put in hotchpot &c. And note well that gift in franke mariage was by the cõmon law before the statute of Westminster the seconde, and alway after hath so bene vsed and continued &c.

¶ Also such putting in hotchpot &c. is where lands or tenements that were giuen in frank mariage discend frõ the donour in franke mariage alonely, for if the landes discende to the daughters by ỳ father of the donour, or by the mother of the donour, or by ỳ brother of ỳ donour or other auncestors, & not by the donour &c. there it is otherwise, for in such case she to whom such gift in franke mariage is made, shal haue her part as if no such gift in franke mariage had bene made, for this that she was not aduaunced by him &c. but by an other.

¶ Also if a man seysed in xxx. acres of lande euery acre of euen yerely value, hauing in issue two daughters as is afore said, and gæueth of this to the husbande of the daughter xb. acres in franke mariage, and dieth seised in the other xb. acres, in this case that other syster shal haue the xb. acres so discended to her only, and the husband & the wife shall not put in such case the xb. acres to him geuen in franke mariage in hotchpot &c. for this that the tenemẽts geuen to him in franke mariage be of as good yearely value as the other lands discended &c.

¶ For

¶ For if the landes geuen in franke mariage were of as euen value as the remnaunt, or of more value, then in vaine and to none entent such landes geuen in franke mariage shalbe put in hotchpot &c. for this that she may haue nothing of the other landes descended &c. for if she should haue any parcel of the other lāds discended, then should she haue more in yerely value, then her sister &c. Which the lawe will not &c. And as it is said in the cases aforesaid, of two daughters or two parceners, in ỳ same manner, and in lyke cases is, where there bee mo sisters, after that as the case and the matter is &c. And it is to wytte, that lands & tenements geeuen in franke mariage, shall not be put in hotchpot, but with the lands discended in fee simple, for of landes discended in fee taile, partition shalbe made as if no such gifte in frank mariage had bene made. Also no lāds shalbe put in hotchpot with other, but landes that bee geuen in franke mariage al only. For if any womā haue any other lāds or tenemēts by any other gift in the tayle, shee shall neuer put such land so geuen in hotchpot &c. but she shal haue the part of the remnaunt, discended &c. that is as much as the other parcener shal haue of the same remnaunt.

¶ Also another partition may bee made betwene parceners, that variety from the partitions aforesayd, as if there be three parceners, and the yongest would haue partition, and the other two woulde not, but will holde in parce-

na-

tenary that, ỳ to them belongeth without partition. In this case if one part bee allotted in seueraltie to the yonger sister after that that she ought to haue, then the other may hold the remenant in parcenary & occupie in common without partition if they wil, & such partition is good inough. And if after the elder & middle parcener wil make partitiõ betwene them of that that they held, they may wel do so when they please. But where partition shalbe made by force of a writ de Participatione faciẽd &c. there otherwise it is, for there it behooueth ỳ euery parcener haue his part in seueralty &c. More shalbe said of parceners in the chapiter of ioyntenants, & also in the chapiter of Tenants in common.

¶ Ioyntenaunts.

Ioyntenants bee as a man seysed of certayne landes or tenements &c, and thereof hath enfeoffed two, or three, or foure, or moe, to haue and to hold to them and to their heires, or to haue and to holde to them for terme of their liues or for terme of an others life, by force of which feoffement they be seysed, such be iointenaunts.

¶ Also if two or three disseyse another of any lands or tenements to their owne vse, then the disseisours be ioyntenaunts. But if they disseise another to the vse of one of them, then bee they no ioyntenants, but he to whom the

vse of the disseisin is made, is sole tenant, & the other haue nothing in the tenancy but bee called coadiutors to ỳ disseisin &c. And note well ỳ disseisin is properly where a mā entreth into any lands or tenemēts, where his entre is not lawful & putteth hī out ỳ hath the frāktenemēt &c. And it is to wit, ỳ the nature of iointenācy is, ỳ he that suruiueth shall haue onely the whole tenancy after such estate as he hath if the iointure be cōtinued &c. As if iii. iointenāts be in fee simple & ỳ one hath issue & dieth, yet they that suruiue shal haue the tenements whole, & the issue shall haue nothing, & if the second iointenāt haue issue and die, yet ỳ third ỳ suruiueth shal haue the tenements whole, & shal haue them in fee simple to him and to his heirs, but otherwise it is of parceners. For if iii. parceners be, & before any partition, ỳ one hath issue & dieth, that ỳ to hir belongeth shal discend to hir issue, & if such a parcener die without issue, then that, that to her belongeth shall discēd to hir heirs, so that they shall haue this by discent & not by the suruiuour as ioyntenauntes haue &c. And as the suruyuour holdeth place among ioyntenaūts &c. in the same maner it holdeth place amōg them that haue ioynt estate or possession with other of chatteis real, or chatteis personall. As if a lease of landes or tenementes bee made to many for terme of yeres, he that suruiueth of the lessees shal haue the tenements whole to him during the terme by force of the same lease. And if

any

my horſe, or other chattel perſonall be geeuen to many mo, he that ſuruiueth ſhal haue them to him ſelfe.

In the ſame maner it is of dets & duetyes &c. For if an obligation bee made to many for one duty, he ỳ ſuruiueth ſhal haue all the debt and ſo it is of al other couenants & contracts.

Alſo, ſome ioyntenauntes may bee that may haue ioynt eſtates and bee ioyntenaunts for terme of their lyues, and yet they haue ſeueral inheritaunces. As if landes bee geeuen to two menne and to the heires of their two bodyes engendred. In this caſe the doneés haue ioynt eſtate for terme of their two lyues and they haue ſeueral inheritaunce. For if the one of the doneés haue iſſue and die, the other that ſuruiueth ſhall haue all by the ſuruiuour for terme of hys lyfe. And if hee that ſuruyueth hath alſo iſſue, and dye, then the iſſue of the one ſhall haue the halfe of the lande, and the iſſue of the other ſhall haue the other halfe of the lande, and they ſhall holde the land betweene them in commune, and bee not ioyntenauntes but tenauntes in commune. And the cauſe that ſuch doneés in ſuch caſes haue ioynt eſtate for terme of their lyues, is thys, for this, that at the beginninge landes were geeuen to them two, which wordes wythout more saying, made a ioynt eſtate to thē for ẽme of their liues. For if a mā will let land to another by deede or wout deede, not making mention what eſtaṫ he hath, & of this maketh liue-

ry of seysin. In this case the lessee shall haue estate for terme of his lyfe, and so in so much that the lands were geuen to them, they haue a ioynt estate for terme of their lyues: and the cause why they haue seuerall inheritaunce is this, in so much that they cannot by possibility haue an heire betweene them ingendred as a man and a woman may haue &c. then ỳ lawe will that their estate and their inherytaunce shalbe such as reason wil after the fourme and effecte of the wordes of the gyfte, and that is to the heires that the one engendreth of his body by any of his wiues, and the heires that the other engēdreth of his body by any of his wiues &c. So it behoueth by necessity of reason, that they shal haue seuerall inheritaunce. And in such case, if the issue of one of the donees after the death of the donees dye, so that hee hath no issue alyue of his body engendred, then the donour or his heires may enter in the halfe as in his reuersion, though ỳ other of the donees hath issue alyue &c. And ỳ cause is for so much as the inheritaunce is seuered &c. the reuersion in the law is seuered &c. and the suruiuour of the issues of the other shall hold no place to haue the whole, & so as it is sayde of males, in the same maner it is where lande is geuen to two females & to the heires of their two bodies begotten.

Also if landes be geuen to two females & to the heires of one of them, thys is a good ioynture, and the one hath a freeholde, and the other

other hath fee ſimple, & if ſhe ỳ hath the fee die, ſhe ỳ hath ỳ free hold ſhall haue the whole by the ſuruiuor for terme of life. In ỳ ſame maner it is where tenũtz be geuen to two, & to the heires of the body of one of them engendred, the one hath free hold, & thother fee taile. Alſo if two ioyntenants be ſeiſed of eſtate of fee ſimple, and the one grãnteth a rent charge by his deede to another out of that that to hym belongeth &c. In this caſe during the lyfe of the grauntour, the rent charge is effectuall. But after this deceaſe, the rẽt charge is voide as to charge the land, for he that hath the land by the ſuruiuour, ſhal hold al the land diſcharged. And ỳ cauſe is for this, that hee that ſuruiueth clameth to haue the land by the ſuruiuour &c. and not by diſcent of his fellow &c. But otherwiſe it is of parceners, for if there bee two parceners of tenements in fee ſimple, & before any partition, the one chargeth, that that to him belongeth by his deede, of a rente charge &c. and dieth without iſſue, & that ỳ to him belongeth, diſcendeth to the other parcener: In this caſe the other parcener ſhal hold the land charged &c. for this that he cõmeth to the halfe by diſcent as heire &c.

Alſo if there bee two ioyntenauntes in fee ſimple within one borough where the landes and tenements within the ſame borough bee deuiſable by teſtament, if the one of the ſayde ioyntenauntes deuyſe that that to him belongeth by teſtament &c. and dye, this deuyſe is

voyde. And the cause is for this ỳ no deuyse may take effect but after the death of the deuisour. And for this ỳ by his death all the lande incontinent commeth by ỳ lawe to his fellowe ỳ suruiueth, by the suruiuour, which neyther claimeth nor hath nothing in the land by the deuise, but in his owne right by the suruiuour after the course of the lawe &c. for this cause such deuise is voyde.

But otherwise it is of parceners seysed of tenements deuisable in such case of deuise, &c. Causa qua supra. Also it is commonlye sayd ỳ euery ioyntenant is seised of the lande that he holdeth ioyntly &c. throughout and by all. And this is as much to say, that hee is seised by euery parcel, and by al &c. and this is true, for in euery parcel, and by eche parcel, & by all the landes and tenements he is ioyntly seised with his fellowes &c.

And if two ioyntenants be seised of certein landes in fee simple, and the one letteth that, ỳ to him belongeth to a straunger for terme of forty yeares, and dieth within the terme. In this case after his decease the lessee may enter and occupy the halfe to him letten during the terme &c. though the lessee neuer had possessiõ of it in the life of the lessor, by force of ỳ lease &c. And the diuersitie betweene the case of the graũt of a rent charge & this case, is this. For in the graunt of a rent charge by a ioyntenãt, the tenants abide alway as they were before without that, that any hath any right to haue

parcel

parcel of the tenemẽts but himselfe, & the tenements abide in such plyte as they were before the charge &c. But where a lease is made by a iointenant to another for terme of yeares &c. incontinent by force of the lease the lessee hath right in the same land, that is to say of al that, ỳ to his lessour belonged, & to haue ỳ by force of the same lease during his terme &c. & this is the diuersity &c.

¶ Also, iointenãts if they wil, may make partiton betwene thẽ, & the partition is good ynough, but they shal not be cõpelled by ỳ lawe to do it, but if they wil make partition of their proper wil and agreement, the partition shall stand in his strength. 27. E. 4.

¶ Also if a ioint estate bee made of lande to the husband and the wife, and to a third person, in this case the husbande and the wife haue not in the law in their right but ỳ halfe &c. And the third person shall haue as muche as the husband and the wife haue, that is to say, the other halfe &c. And the cause is, for that the husband and the wife be but one person in the lawe, & be in like case as if estate be made to two iopntenãts, where eche one hath by force of ỳ iopnture the one halfe, & the other ỳ other halfe. In ỳ sãe maner is it where an estate is made to ỳ husbãd & the wife & to other two men, in this case the husband and ỳ wife haue not but the third parte, and the other two men the other two partes &c. Cause qua supra. More shalbe sayde of them touching

iointenancy in ỳ chapter of tenants in cõmon, tenant per Elegit, & tenant by eſtat marchant

¶ Tenants in common.

TEnauntes in common, bee they that haue landes & tenements in fee ſimple, fee tayle, or for terme of life &c. which haue ſuch lands and tenements by ſeuerall title, and not ioint title, and none of them knowe that, that is ſeueral to him. But they ought by the lawe to occuppe ſuch landes and tenementes in comenon, and vndeuided to take the profites in common. And becauſe that they come to ſuch landes and tenementes by ſeuerall titles, and not by one ſelfe ioint title, and their occupation & poſſeſſion ſhalbe by the law among them in cõmon, therefore they be called tenaunts in common: as if a man enfeoffe two iointenãtes in fee, and the one of them alieneth that that to him belongeth to another in fee, nowe the other iointenant and the alienee bee tenantes in commõ, for this that they be ſeiſed in ſuche tenementes by ſeuerall tytles, for the alienee commeth vnto the halfe by the feoffement of thone ioyntenaunt, and the other iointenant hath the other halfe by force of the firſt feoffement made to hym and to hys firſt fellowe: and ſo they be in by ſeuerall titles, and by ſeuerall feoffements &c. And it is to weete, that when it is ſaid in any booke, that a man is ſeiſed in fee: without more ſaying, it ſhalbee

vnder

vnderstoode fee simple, for it shall not bee vnderstoode by such word in fee, that a mā is setsed in fee taile, except that there be put thereto such addition, that is to say, fee taile.

¶ Also if three iointenauntes bee, and the one of them alieneth that, that to him belongeth to another in fee. In this case ỳ alienee is tenaunt in common with the other two iointenauntes. But yet the other two iointenantes be seised of the two parties iointly, & of those two partes the survivour betweene thē holdeth place &c.

¶ Also if there be two ioyntenauntes in fee, and the one giueth that, that vnto hym belongeth to another in the tayle, the donee and the other iointenauntes be tenants in commō &c. But if the landes be geeuen to two men & to the heires of their two bodies engendred, the donees haue none estate for terme of their lyues: and if eth of them haue issue and dye, their issues shall holde in common &c. But if landes be geeuen to two Abbots, as to the Abbot of Westminster & to the Abbot of S. Albones, to haue and to holde to them and to their successours, in this case they haue incontinent at the beginninge, estate in common, and not ioynt estate. And the cause is for this, that euery Abbot of other soueraigne of an house of religion before that he be made Abbot or soueraigne, was but a dead man in the lawe. And when he is made Abbot he is as a mā personable in ỳ law, al onely to purchase

chase, and to haue landes and tenements and other thinges to the vse of his house and not to his owne proper vse, as other seculer men may. And for this in the beginning of their purchase, they be tenaunts in common. And if the one of them dye, the Abbot that survyueth shal not haue al by the survivour, but the successour of the Abbot that dyeth shall hold the half in common with the Abbot that survyueth &c.

Also if lands be geuen to an Abbot & to a seculer man, to haue & to holde to them, ỳ is to say, to the Abbot & his successors, & to the seculer man, to him & to his heires, they haue estate in common, Causa qua supra.

Also if lands be geuen to two mē to haue & to hold ỳ one half to the one & to his heires, and the other half to the other & to his heirs, they be tenants in common &c.

Also if a man seised of certeine landes enfeoffeth another in the halfe of the same lande without any speach of assignement or limitation of the same halfe in seueralty at ỳ time of the feoffement, then ỳ feoffee & the feoffor shall hold ỳ partes of the land in common. And in ỳ same maner as is aforesayd of tenāts in common, of lands or tenemēts in fee simple or fee tayle, in the same maner may it be sayd of tenants for terme of life. As if two ioyntenāts be in fee, & the one letteth to a man that, ỳ vnto him belongeth for terme of lyfe, and the other ioyntenaunt letteth that, that to him belongeth

longeth to another for terme of life, these two leslees bee tenauntes in commen for terme of their liues &c.

Also if a mā let lāds to .ij. men for terme of their liues, and ỳ one granteth all his estate of that, ỳ vnto him belongeth to another &c. thē thother tenāt for terme of life, & hee to whom the graunt is made, be tenantes in cōmon during the time ỳ both lessees bee alue.

And it is to be remembred, that in all other such cases though that they bee not heere expressly named or specified, if they be in like reason, they bee in like lawe.

Also, if there be two ioyntenāts in fee, and the one letteth that, ỳ vnto him belongeth to another for terme of life, ỳ tenant for terme of life, during his life, and ỳ other ioyntenāt that did not let, be tenants in common. And vpon this case a question may ryse, as thys. Put ỳ case ỳ the lessour hath issue and dyeth, ỳ ounge thother ioyntenant his felow, & ỳ ung ỳ tenāt for terme of life, the question may be such, if the reuersion of ỳ halfe &c. ỳ the lessor hath, shal discend to ỳ issue of ỳ lessor, or ỳ the other ioyntenāt shal haue it by ỳ suruiuor. and some haue said in this case, ỳ the other ioyntenaunt shall haue the reuersion by the suruiuour, and their reason is such, whē the ioyntenāts were ioyntly seised in fee simple &c. though the one of thē made estate of ỳ, ỳ vnto him belongeth for term of life, & though that he hath seuered ỳ franktenemēt of that, ỳ vnto him belongeth

by

by ẏ lease, yet he hath not seuered the fee simple. But the fee simple abydeth to him iointly as it was before. And so it semeth vnto them that the other iointenant that suruiueth, shall haue the reuersion by the suruiuour &c. And other haue said the contrary, and this is their reason, when one of the iointenaunts letteth this that to him belōgeth to an other for term of his life, that by such lease the franketenement is seuered from the iointure. And by the same reason the reuersion that is reuendaunt vnto the same franktenement, is seuered from the ioynture. Also if the lessour had reserued to him a yerely rent, vppon the lease, the lessour onely should haue had the rent &c. The which is a proofe that the reuersion is onelye in him, and that the other hath nothing in the reuersion &c. Also if the tenaunt for terme of life were impleaded &c. and made defaut after defaut, then the lessour shalbe onelye of thys receyued to defende his right, and his fellowe in this case in no manner shalbee receyued: which prooueth that the reuersion of the halfe is onelye in the lessour. And so by cōsequens, if the lessour dye liuinge the lessee for terme of life, the reuersion shall discend to the heires of the lessour &c. and not come to the other ioyntenaunt by ẏ suruiuour. Ideo quere But in this case if the iointenāt that hath ẏ franktenement haue issue and die, lyuinge the lessour and the lessee, then it semeth, that ẏ issue shall haue the halfe in hys demesne as of

fee

fee by diſcent, for this that the franktenement may not by nature of the ioynture be annexed to a reuerſion &c. and it is certein that he that letteth, was ſeiſed of the halfe in his demeine as of fee, & none ſhal haue any ioynture in hys franktenement. Ergo this ſhall diſcend to his iſſue. [Sed quere. But if it be thus, ỳ the lawe in this caſe is ſuch, ỳ if the leſſour dye lyuinge the leſſee, & lyuing the other ioyntenaunt that hath the franktenement of the other half, that the reuerſion ſhall deſcende to the iſſue of the leſſour, thē is the ioynture & the title that any of thē may haue by the ſuruiuour by the right of the ioynture, adnulled & all vtterly defeated for euerr.

In the ſame maner it is if ỳ ioyntenāt that hath the franktenement die, lyuing the leſſour & the leſſee, if the law be ſuch that his frāktenement & fee that he hath in the halfe ſhal diſcend to his iſſue, then the ioynture ſhalbe defeated for euer &c.

Alſo if three ioyntenantes bee, & the one releaſeth by his deede to one of his feloŵes al ỳ right ỳ he hath in the lād, thē hath he to whō the releaſe is made, the third part of the lādes by force of the releaſe, & he and his fellow ſhal hold the other ij. parts ioyntly. And as to the third part ỳ he hath by force of the releaſe, hee holdeth the third part with himſelfe, & his feloŵe in common.

And it is to wit that ſometime a deede of releaſe ſhall take effect and ſhall bee in vre to

put

put the eſtate of him ỳ made ỳ releaſe, to him to whom the releaſe is made, as in the caſe aforeſayd.

And alſo if a ioynt eſtate be made to ỳ huſband and his wyfe, and to a third perſon, and the third perſon releaſeth his right ỳ hee hath &c. to the huſband, then hath the huſband the halfe that the third perſon had, and the wyfe of this hath nothing. And if in ſuch caſe the third releaſe &c. to the wyfe not naminge the huſband in the releaſe, then hath the wyfe the halfe that the third perſon had. And the huſband hath nothing of this, but in right of hys wife, for this that in ſuch caſe the releaſe ſhall enure to put th eſtate to him to whom the releaſe is made of all that, that belonged to him that made the releaſe, and in ſome caſe a releaſe ſhal enure to put al ỳ right that hee hath that made the releaſe, to him, to whom the releaſe is made. As a manne ſeyſed of certayne landes and tenementes, is diſſeyſed by two diſſeyſours, if the diſſeyſee by his deede releaſe all hys ryght &c. to one of the diſſeyſours, then hee to whom the releaſe is made, ſhall haue and holde all the tenementes to hym onelye, and put his fellowe oute of euery occupation of it. And the cauſe is, for this that the two diſſeyſours were ſeyſed in the tenementes by wrong by them done againſt the lawe. And when one of them hath the releaſe of him that had right to enter &c. thys right in ſuch caſe reſteth in him to whom the releaſe

releaſe is made, and in ſuch plight as if hee that had the right had entred & enfeoffed him &c. And the cauſe is for this, that hee that before hyd an eſtate by wrong, that is to ſay: by deſſeiſin, now by the releaſe hath a rightful eſtate.

¶ And in ſome caſe a releaſe ſhall enure by way of extinguiſhment, & in ſuch caſe ſuch releaſe ſhall help the ioyntenãt to whom the releaſe was not made, as well as him to whom the releas is made. As if a man bee diſſeyſe, & the diſſeiſour maketh a feoffemẽt to .iij. men in fee, if the diſſeiſee releaſe to one of the feoffees in fee by his deede, then ſuch releas ſhal enure to both the feoffees, for this that the feoffees haue eſtate by the law, ỳ is to ſay, by the feoffemẽt and not by wrong done to any other.

And in the ſame maner it is, if the diſſeiſor make a leaſe to a manne for terme of lyfe, the remainder ouer to another in fee, if the diſſeiſy releaſe to the tenaunt for terme of life all his right &c. This releaſe enureth as wel to him in ỳ remainder, as to ỳ tenant for terme of life &c. And the cauſe is for this, ỳ tenãt for terme of life cõmeth to his eſtate by the courſe of the law. And for this the releaſe ſhal ẽure & take effect by way of extinguiſhment of the righte of him ỳ hath releaſed &c. And by this releaſe the tenant for terme of life hath no greater eſtate then he had before the releaſe made vnto him, & the right of him that releaſed is al vterlye extincte. And in ſo much that ſuche releaſe

releaſe cannot enlarge the ſtate of the tenant for terme of life, it is reaſon that the releaſe ſhall enure to him in the remainder &c. More ſhall be ſaid of releaſes in the Chapiter of releaſe.

¶ Alſo if there be two parceners, and the one alieneth that ꝑ vnto him belõgeth to another, thẽ the other parcener and the alienee be tenaunts in common.

¶ Alſo tenants in common may bee by title of preſcription, if the one and his anncеſters, or they whoſe eſtate he hath in the halfe, haue holden in common, the ſame halfe with the other tenãt that hath the other halfe, and with his aunceſters, or them whoſe eſtate hee hath as vndeuided, from time whereof no memory renneth. And diuers other matters may make & cauſe men to be tenants in common that bee not expreſſed.

¶ Alſo in ſome caſe tenãts in commõ ought to haue of their poſſeſſion ſeueral actions, and in ſome caſes they ſhal ioyne in one acciõ. For if there be two tenaunts in common, and they be diſſeiſed, they ought to haue againſt the diſſeiſour two aſſiſes, & not one aſſiſe, for euerie of them ought to haue an aſſiſe of his halfe &c. & the cauſe is for this, ꝑ tenãts in common were ſeiſed by ſeueral titles, but otherwiſe it is of iointenaunts. For if there be xx. ioyntenants & they be diſſeiſed, they ſhall haue in all their names but one aſſiſe, becauſe that they had but one ioint title.

¶ Alſo

Also if there bee three ioyntenaunts and one releaseth to one of his fellowes all the ryght that he hath, and after the other two be disseised of the whole &c. in this case the other shall haue seuerall assyses in this forme, ỹ is to say, they shall haue in both their names one assyse of the two partes &c. for this that they helde the two partes ioyntly at the tyme of the disseysin. And as to the third parte, hee to whom the release was made, ought to haue thereof an assise in his owne name, for this, ỹ as to the third parte hee is tenant in common &c. for this, that hee came to the third parte by force of the release, & not onely by force of the ioynture.

¶ Also, as to sue actions that touche the realty, there is diuersity betweene parceners that bee in by dyuers discentes, and tenaunts in common. For if a man seysed of certayne landes in fee, haue issue two Daughters and dye, and they enter &c. and eche of them hath issue a sonne & dyeth without partition made betweene them, by which the one half discendeth to the sonne of the one parcener, and the other halfe discendeth to the sonne of thother parcener, and they enter and occuppe in common & be disseysed in this case they shall haue in their two names one assise and not two assises. And the cause is, that though they come in by dyuers discents &c. yet they be parceners and a writ de participatione facienda lyeth betwen them: and they be not parceners hauing

or respect onely to the seisin and possession frō their mothers, but they be parceners hauinge more respect to their estate that discended frō their grandfather to their mothers. For they maye not bee parceners where their mothers were not parceners before &c.

¶ And so to such respect and consideration, is to wit, as to the first discent that was to their mothers they haue a title in parcenarie, the which maketh them parceners. And also they be but as one heire to their cōmon auncester that is to saye, to their graundfather from whō the lād discēded to their mothers. And for theis causes before partition betwene the &c. they should haue one assise though they come in by seuerall discents &c.

¶ Also if there bee two tenaunts in commō of certaine landes in fee, & they giue the same lande to another man in the tayle, or let it to another man for terme of life, yelding an annuity or certaine rent, and a pounde of pepper or an hauke, or an horse, and they bene seysed of their seruices & after al the rent is behinde and they distraine for it, and the tenaunt maketh them rescous.

¶ In that case as to the rent and the pound of pepper, they shall haue two assises, & as to the hauke and the horse but one assise, and the cause why they haue two assyses as to the rent and pounde of peppr is this, in so much that they were tenaunts in common by seuerall titles, and when they made

made a gifte in the tayle or lease for terme of life &c. sauing to thē ẏ reuersion, & yeelding to them certaine rent &c. Such reseruation is incident to their reuersion.

¶ And for this ẏ their reuersion is in common and by seueral titles, as their possession was before the rent, and other thinges that may be seuered and were to thē reserued vpon the gift or vpon the lease which bee incident by the lawe to the reuersion, such things so seuered were of the nature of the reuersion, which reuersion is to them in common by seuerall titles. And it behoueth that the rent of the pound of pepper which may be seuered be to them in common by seuerall titles. And of this they shal haue two assises, and euerye of them in his assise shal make his plaint of the halfe of the rent and of the halfe of the pound of pepper &c.

¶ But of the hauke and the horse which can not be seuered, they shall haue but one assise. For a mā may not make a plaint in assise of ẏ halfe of an hawke or of ẏ halfe of an horse &c. In the same manner it is of other rentes and seruices that tenants in cōmon haue in grosse by diuers titles.

¶ Also as to actions personals, tenauntes in common ought to haue such accions personels iointly in al their names, that is to saye, of Trespasse, or of offences that touche their tenementes in common. As of breakinge of their houses, breaking of their closes, and

pastures, wasting & defowling of their grasse, cutting of their woode, and to fishe in their ponds, & such other. In this case tenaunts in cõmon shall haue one accion ioyntlye & recouer ioyntly damages, because that the accion is in the personalty and not in the realty.

Also if two tenauntes in common make a lease of their two tenementes to another for tme of yeres yeelding vnto them yerely a certaine rent, if the rent be behynde &c. the tenãts shall haue one accion of debt against the lessee and not dyuers accions, for that the accion is the personaltye.

Also tenaunts in common maye make partition betweene them if they will, thoughe they shall not bee compelled by the law. But if they make partition betweene them by ther agreement and assent, such partition is good ynough, as it is adiudged in ỳ booke of assises, P. 3. E. 4.

Also as there bee tenauntes in common of lands and tenements &c. as is aforesaid. In ỳ same manner there bee tenauntes in common of chattels reall and chattels personall. As if a lease bee made of certaine lands to two men for terme of xx. yeres, & when they bee thereof possessed, the one of the lessees graunteth that ỳ vnto him belongeth before the terñ to another, then he to whõ the graunt is made & the other shall hold and occupy in common.

Also, if two toyntenauntes haue the ward of the body and of the lands of a child within age,

age, and the one of them granteth to another that, ỳ vnto him belõgeth of the same warde, then the grauntee and the other that grauteth not, shal haue and hold it in common &c.

¶ In the same maner it is of chatels personals, as if two haue a ioynt estate by gifte or by buying of an horse or an Oxe &c. the one of them graunteth that, that to him belongeth of the same horse or oxe &c. Then the grauntee & hee that graunted not, shall haue and possesse such chattell personall in common, &c. And in such cases where diuers persons haue chatels reals or personals in cõmon and by diuers titles, if the one of them die, the other that suruiueth, shal not haue that by the suruiuour. But the executours of him that dyeth shall holde and occuppye that with him ỳ suruiueth as their testatour did or ought in his life, &c. for this that their titles and right in this case were seuerall.

¶ Also in this case aforesaide, if two haue estate in common for terme of yeres, & the one occupy al and put the other out of his possession and occupation, Then shal he that is put out of occupation haue agaynste the other a writte de Iectione firme for the halfe agaynste the other. In the same maner it is where two holde the warde of landes or tenementes during the nonage of a childe, if one put out the other of his possessiõ, he that is out, shal haue a writ of Iiectment de gârde of the halfe for this that those thinges be chattels reals,

and may be apportioned and seuered &c. But no such accion of trespas, ỳ is to say. Quare clausum suũ fregit & herbam suã coculcauit & consumpsit &c. And such like occions the one may not haue against the other, for this that ech of them maye enter and occupye in common &c. throughout & by all the tenementes which they holde in common. But if two be possessed of chatels personels in cõmon by diuers titles, as of an horse, or an oxe, or a bowe if the one take it all to himselfe out of ỳ possession of the other, the other hath none other remedy but to take this of him that hath done to him the wrong for to occupye in common when he may see his time,

¶ In the same maner it is of chatels real that may not be seuered, as the case aforesaid two be possessioners of a warde of the body of a childe within age, if one take the childe out of the possession of the other, the other hath no remedy by any accion by the lawe, but to take the childe out of the others possession whē he seeth his time &c.

¶ Also when a man in pleading will shew a deede of feoffement made vnto him, or a gyfte in the tayle, or a lease for terme of life of anye landes or tenementes, there he shall saye by force of which feoffement, gift, or lease he was seised &c.

But where a mã wil plede a lease or a graunt made vnto him of a chatel real or psonel, there he shal say by force of which he was possessed

More

More shalbe sayd of tenauntes in common in ỳ Chapter of Releales, Cõfirmatiõs, & Tenants per Elegit.

¶ Estates vpon condition.

ESTates ỳ men haue in landes of tenemẽts be in two maner. That is to say, they haue estate vpon condition in dede, or vpon condition in law. Vpon condition in dede, is as a man by dede indẽted enfeoffeth another in fee reserving to him & to his heires yerely a certain rẽt, paiable at one feast or at diuers feasts by yere, vpon condition ỳ if the rẽt be behynde &c. ỳ it shalbe lawful to the feoffour & to his heires to enter into the lands or tenemẽts &c.

¶ Or if the lande bee aliened to another in fee, to yeeld vnto him certaine rent &c. And yf it hap that the rent be behinde by a weeke after any day of payment of it, or by a moneth, or by a halfe yere after any day of payment, that then it shalbe lawful to the feoffour and to his heires to enter &c.

¶ In this case if the rent be not payed at such a time or before such a time limitted and specified within ỳ condition comprised in the indẽture, thẽ may ỳ feoffor or his heires enter into suche landes or tenementes, & them in his first estate to haue and to holde, and of thys to put the feoffee cleane out, and it is called estate vppon condition, for this that the

eſtate of the feoffee is defeaſible if the cõdition be not performed.

¶ In the ſame maner it is if landes bee geuen in the tayle, or let for terme of life, or for terme of yeres, vppon ſuch condition &c. But where a feoffement is made of certaine landes reſeruing certaine rent vppon ſuch condition ỳ if the rent be behinde, that it ſhall bee lawful to the feoffour and his heires to enter, and the lande to holde till they bee ſatisfied or payed of their rent behinde &c. In this caſe if the rent be behind and the feoffour and hys heires enter, the feoffee is not excluded cleane out. But the feoffour ſhall haue and holde the lande, and take the profites tyl that hee be ſatisfied of the rent behinde &c. And when he is ſatisfied, the feoffee may reenter in ỳ ſame lande and hold it as he did before, for in ſuche caſe ỳ feoffour ſhall haue it, but in maner for a diſtreſſe in the meane time, till he be ſatisfied of the rent &c. though he take the profites in the meane time.

¶ Alſo, diuers wordes among other there be that by vertue of thẽſelfe make eſtate vpõ condition. One is this worde of condition, as A. enfeoffeth B. of certaine lande, to haue and to holde to the ſame B. and his heires vppon conditiõ that the ſame B. and his heires ſhall pay or do to be payed to the foreſaide A. and to his heires yerely ſuch rẽt &c. In theſe caſes without any more ſaying the feoffee hath eſtate vpon condition. Alſo if the conditiõ were

ſuch

ſuch: Prouided alway that the aforeſaid B. pay or do to be payed to the aforeſaid A. ſuche rent. Or if they were thus, ſo that ỳ aforeſaid B. pay or do to be payed ſuch rent. In theſe cales without any more ſaying, ỳ feoffee hath eſtate but vpon condition, ſo ỳ if he performe not the condition, the feoffour and his heires may enter &c.

Alſo other wordes there be in a deede that cauſeth the tenementes to be conditionals, as vpon ſuch a feoffement a rent is reſerued to the feoffour &c. & after it is put in ỳ deede that if it chaunce the aforeſaid rent to bee behinde in part or in all &c. that then it ſhalbe lawefull to the feoffour and to his heires to enter. And this is a deede vpon a condition. But there is diuerſitie betweene the wordes (if it chaunce.) &c. and the wordes next aforeſaide. For this worde (if it chaunce) &c. is nought worth to ſuch condition, but if it haue theſe woordes following, that is to ſay, that it ſhalbe lawfull to the feoffour and to his heires to enter &c. But in theſe ca es aforeſaide, it nedeth not by the lawe to put ſuch clauſe, that is to ſaye, that the feoffour and his heires may enter &c. for this that they may ſo doe by force of the wordes aforeſaide, becauſe they contayne in them ſelfe in the lawe a condition, that is to ſaye, that the feoffour and his heires maye enter. Yet it is common in all ſuche cales aforeſayde, to put ſuche clauſes in the deedes, that is to ſay, if the rent bee behinde

&c.

&c. that it shalbe lawfull to the same feoffour and his heires to enter &c. And this is well done to that intent for to declare and expresse to the lay men that be not learned in the law, the maner and the condition of the feoffement &c. As a man seised of lande as of franktenement, let the same land to another by dæde indented for terme of yeares, yelding vnto him certain rent, it is vsed to be put in ỳ dede ỳ yf the rent be behinde at the day of payment by a moneth &c. That then it shalbe lawful to ỳ lessour to distraine &c. and yet the lessour may distraine of common right for the rent behind &c. though such wordes neuer were set in the dæde &c.

¶ Also if a feoffement bee made vppon such condition, that if the feoffour pay at a certaine day &c. xx. li. of money, that then the feoffour may enter &c. In this case the feoffee is called tenaunt in morgage, that is as much to saye in frenche as morgage, and in latin mortuum vadium, and in Englishe a dead pledge. And it seemeth that the cause why it is called morgage, is ỳ it standeth in doubt if the feoffour wyl paye at the daye limitted, such a summe or not, and if he pay not, then the land that is put in pledge vppon condition for the payment of the money, is gone frō him for euer, & so dead as to the tenant &c.

¶ Also as a man maye make a feoffement in fee in morgage, so may a man make a gift of the tayle in morgage, and a lease for terme

of

of life, or for terme of yeares in morgage. And all ſuch tenants be tenaunts in morgage after the ſtate that they haue in the landes &c.

Alſo, if a feoffemente bee made in morgage vppon condition that the feoffour ſhall paye ſuch a ſumme at ſuch a day &c. as is betweene them by their deede endented accorded, and limited, though the feoffour dye before the daye of payement &c. yet if the heyre of the feoffour paye the ſame ſumme within the daye to the feoffee, or proffer him the money, and the feffee refuſeth to receyue it, then maye the heyr enter into the landes. And yet the condition is if the feoffour pay ſuch a ſumme at ſuch a day &c. and not makinge mention in the condytyon of any payement to bee made by his heyre, but for this that ỳ heyre hath intereſt of right in the condition &c. and the intent was but that the money ſhoulde bee payed at ſuche a daye ſet &c. and the feoffee hath no more dammage to bee payed by the heyre, then thoughe he were payed by the father &c. for this cauſe if the heyre paye the moneye or tenderth the moneye at the daye ſet &c. and the other refuſeth it, he maye well enter. But if a ſtraunger of his owne head that hath no intereſt &c. woulde tender and pay the money at the day ſet, then the feoffee is not bounde to receyue it &c.

¶ And it is to bee had in mynde that in ſuch caſe where ſuch lawfull tender of the money

is

is made, and the feoffee refuſeth to receiue it, wherefore the feoffour or his heires, do enter &c. then the feoffee hath no remedie to haue ỳ money by the common lawe, for this ỳ it ſhall bee rected his owne folye that he refuſed the money when lawfull proffer was made of it vnto him &c.

¶ Alſo it a feoffement be made vp ſuch condition, that if the feoffee pay to the feoffour at ſuch a day betwene them limitted xx.li. ỳ then the feoffee ſhal haue the lād to him and to hys heires, and if he faile to pay the money at the day &c. ỳ then it ſhalbe lawful to the feoffour or to his heires, to enter &c. & if after, before the day ſet, the feoffee ſelleth the lande to another, & thereof maketh a feoffement vnto him, in this caſe if the ſecond feoffee will tender ỳ ſūme of money at the day ſet to the feoffour, and the feoffour refuſeth it &c. then hath the ſeconde feoffee eſtate in the land clerely without condition, And the cauſe is, for ỳ the ſecond feoffee had intereſt in the condition for ſaluation of his tenauncie. And in this caſe it ſeemeth that if the firſt feoffee after ſuch ſale of the lād will tender the money at the day ſet &c. to the feoffour, that ſhal be good mough for the ſaluation of the eſtate of the ſeconde feoffee, for this that the firſt feoffee was privy to the condition, and ſo the tender of anye of them is good inough &c.

¶ Alſo if ỳ feoffement be made vpon conditiō, that if ỳ feoffor pay a certeine ſūme of money

to

to the feoffee, that then it ſhalbe lawful to the feoffour and to hys heires to enter &c. In this caſe if the feoffour dye before the day of payment, & the heire will tender to the feoffee the money, ſuch tender is vaine, for this, that the tyme within which the tender ought to be made, is paſt. For when the condition is, ỳ if the feoffour paye the moneye to the feoffee, this is as much to ſay, that if the feoffour during his life pay the money to the feoffee &c. And when the feoffour dieth, then the time of the tender is paſt. But otherwiſe it is where a day of payment is limitted, and the feoffour dieth before the day, then may the heire tender the money as it is aforeſaide, for this at the tyme of the tender was not paſt by the death of ỳ feoffor. Alſo it ſeemeth in ſuch caſe where the feoffour dieth before the day of payment, if the executors of the feoffour tender the money to the feoffee at the day of payment, the tẽder is good inough. And if the feoffee refuſe this, the heires of the feoffor may enter &c. And the cauſe is for this that the executours repreſent ỳ perſõ of their teſtator &c. And note well, ỳ in al ſuch caſes of cõdition of paimẽt of certaine ſume in groſſe, touching lands or tenementes & if lawful tender be once refuſed, he that ought to pay ỳ money is thereof quited & clerely diſcharged for euer.

¶ And if the feoffee in morgage before ỳ day of paymẽt ỳ ſhalbe made vnto him make hys executors & die, & his heire enter into the land as

as he ought. It semeth in this case þ the feoffour ought to pay the money at the day set to the executours, & not to the heire of the feoffee for this that the money at the beginning belonged to the feoffee in maner as a duty.

And it shalbe vnderstood that the estate was made because of borowing of the money of the feoffee, or because of an other duetye. And for this the paimēt shall not be made to the heire of the feoffee as it seemeth. But the wordes of the condition may be such, þ the paiment shalbe made vnto the heire, as if the conditiō were þ the feoffor pay to the feoffee or to his heires such a sūme at such a day &c. There after the death of the feoffee (if he dye before the day limitted) thē the paimt ought to be made to the heire at the day set &c.

¶ Also in such case of a feoffemt in mortgage a questiō hath bene demaunded in what place the feoffour is bound to tender the money to þ feoffee at the day set &c. And some haue sayd that vpon the land so holden in mortgage, for this that the condition is dependant vpon the land, and they haue said that if the feoffour be ready vpon the lande to pay the money at the feast or day set, and the feoffee be not at that time there, þ then the feoffour is excluded and discharged of paiment of the money, for this þ no defaut was in him, but it semeth to sōe mē þ the law is contrary, & the defaut is in him. For he is bound to seke the feoffee if he be thē at any time in any maner of place within the

realme

realme of England. As if a man be bound in an obligation of xx.li. vpō condition endorsed vpon the obligation that if he paye to him to whom the obligation is made at such a daye x.li. that then the obligation of xx.li. shall lose his force and shalbe holden for nought, in this case it behoueth him that made the obligation to seke him to whō the obligation is made, if he be within Englande, and at the daye set, to tender to him the said x.li. &c. And otherwise he forfeiteth the sume of xx.li. comprised within the obligation, and so it seemeth in the other case &c. And though ỳ some haue sayde ỳ the condition is dependant vpon the lande yet this is not proued that the release of the condition to be performed ought to be made vpon the land &c. No more then if the conditiō were that if the feoffor should do at such a day an especiall corporall seruice to ỳ feoffee not naming the place where the corporall seruices should be done. In this case the feoffour ought to do such corporall seruice at the daye limitted to the feoffee in what soeuer place in Englād that ỳ feoffee be, if he wil haue aduātage of the condition &c. And so it seemeth in that other case. And it seemeth to them that it shalbee more properlye saide that the estate of the lande is dependaunt vpon the condition &c. then to saye, that the condition is dependant vpon the land, but enquire &c.

¶ But if a feoffement in fee be made reser-

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uyng to the feoffour an annuell rent, & for default of payment a rætre &c. in this case it nedeth not to the tenant to tender the rēt when it is beehinde, but onely vppon the lande, for this that this is a rent going out of the land, which is not rent secke. For if the feoffour be once seised of his rent, and after hee commeth vpon the land &c. and the rent is denyed hym &c. he may haue an assise of nouel disseisin, for though he may enter because of the condition broken, yet he may chose, that is to say, to enter or to haue an assise. And so is there diuersity as to the tender of the rent that is going out of the land, and of tender of another sūme in grosse which is not going out of any land. And therefore it shalbe sure and a good thing for them that will make such feoffement in morgage, to put and set a special place where the money shalbe payde. And the more speciall that it is put the better it is for the feoffor. As if A. enfeoffe B. to haue to him and to hys heires vppon such condition, that if A. pay to B. in the feast of Saint Michaell the archangel next cōming in ẏ Cathedral church of S. Paule of London within 4. hours next before the houre of noone of ẏ same feast at the roode loft of the North doore within the same church, or any other certaine place within the same church, that then it shalbe lawfull to the foresayd A. and to his heires to enter &c. In such case it needeth not to seeke the feoffee in any other place, but in the place comprysed

in the

in ỹ indenture nor to be there more lōger time then the time specified in the same indenture for to render or pay the money to the feoffee.

¶ Also in such case where the place of payment is limitted, the feoffee is not bound to receiue the paymēt in none other place, but in ỹ place so limitted. But yet if he receiue the payment in any other place, that is good ynoughe and as stronge for the feoffour, as if the receit had bene in the place so limitted &c.

¶ Also in this case of feoffement in morgage if the feoffour, pay the feoffee an horse or a cup of siluer, or a ringe of golde, or any other such thinge in full satisfaction of the money, and ỹ other this receiueth, this is good ynough, and as stronge as if he had receyued the summe of money, thoughe the horse, or any of the other thinges bee not the twentith parte worthe in value of the summe of money, for this that ỹ other hath accepted it in playne and full satisfaction.

¶ Also if a man enfoffe an other in fee vpon condition that hee and his heyres shall yelde to a straunger and his heyres a yearelye rent of xx.s. and if hee and his heyres fayle of payment of this, that then it shalbe lawfull to the feoffour and to his heyres to enter, this is a good condition. And yet in this case thoughe such a yearelye rent bee called an annuell rent, this is not properly a rent, for if it shalbe rent it ought to bee rent seruice, rent charge, or rent seeke, and it is none of them, for if the straun-

ger were seised of this, & after it were to him denyed, he shal neuer haue an assise of this, for this that it issueth not out of any landes, and so the straunger hath no remedie if any suche yerely payment bee behinde in this case, but that the feoffour and his heires may enter &c. and yet if the feoffour and his heires enter for defaut of payment, then such rent is gone for euer. And so such rent is but a payement set to the tenaunt and to his heires, that if they will not pay this after the forme of the indenture, that they shal leese their land by the entre of the feoffour or his heires for defaut of payment. And in this case it semeth that the feoffee & his heires ought to seeke the straunger & his heires if thy be in England, because that no place is limitted where the payment shalbe made, & because that such rent is not goinge out of any land &c.

¶ And here note wel iij. thinges, one is, that no rent that is properly said rent, may bee reserued vpon any feoffement, gift, or lease, but only to the feffour, or to the lessour, or to their heirs, & in no maner may bee reserued to anye strange person. But if two iointenants make lease by deede indēted, reseruing to ỹ one a certaine yerely rent, that is good inough to him to whom the rent is reserued, for this that he is priuy to the lease and not a strāger to this &c. The second thing is, that no entre or reentre (which is al one) may be reserued nor gauen to any person, but onely to the feoffour

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or to the donour or to the lessour ' or to their heires, and such entre may not bee aliened nor granted to any pson. For if a man let lands to another for terme of life by indenture, yelding to ỳ lessour & to his heires certaine rent, & for defaut of payment a reenter &c. if after ỳ lessor by a dede graunt the reuersion of the lande to another in fee, & the tenāt for terme of lyfe attorneth &c. if the rent after be behinde, ỳ grantee of the reuersion may distraine for the rent, for this ỳ the rent is incident to the reuersion, but he may not enter into the land & put out the tenant as the lessour might, or his heires, if the reuersion had bene continued in them &c. And in this case the entre is takē away at all time, for the grauntee of the reuersiō may not enter Causa qua supra. And the lessour nor his heires may not enter, for if the lessour may enter, then he ought to bee in his firste estate &c. & that may not be, for this that he hath put from him the reuersion &c.

¶ Also if there be Lord and tenaunt, and the tenant make such a lease for terme of life, yelding to the lessour & to his heires, such yerely rent, and for defaut of payment to reenter &c. if after the lessour die without heyre, during the state of the tenaunt for terme of life, by whych the reuersion of commeth to the Lorde by waye of escheate, and after the rent of the tenaunt for terme of lyfe is behinde, the Lord may distraine the tenaunt for the rent behind, but he may not enter into the land by force of

the condition &c. for this that he is not heire to the feoffour &c.

¶ Also if land be graũted to a man for terme of yeares vpon condition, that if he pay to the graũtour wiin ij. yeres xl. markes, that then he shal haue the lãd to him & to his heires &c. In this case if the grauntee enter by force of the graunt, & after he payeth to the grauntour xl. markes within ij. yeres, yet he hath nothing in the lãd but for terme of the ij. yeres, for this ẏ no liuerye of seisin was to him made at the beginning, for if he had had franktenement & fee in this case because he hath performed the condition, then should he haue franktenement by force of the first graunt where no liuery of seysin was made thereof, which should bee against reasõ &c. But if the graũtor had made liuery of seisin to the grauntee by force of the graũt, then hath the graũtee the franktenemẽt & the fee vpon the same condition.

¶ Also if landes bee graunted to a man for terme of fiue yeares, vpon condition that hee paye to the grauntour within the firste two yeres xl. markes, that then he shall haue fee, or els but for terme of the fiue yeres, and lyuery of seisin is made to him by force of ẏ graunt. Now he hath a fee simple cõditionel &c. & if in this case the graũtee pay not to the grauntour the xl. markes within the same two first yeres, thẽ immediately after the same ij. yeres the fee and the franktenement is and shall bee adiudged to the grauntour, for this that the

graun-

grauntour may not after the two yeres incō-
ment enter vpon the grauntee, for this that
the grauntee hath yet tytle by thee yeres to
haue and to occupy the land by force of ỳ ſame
graunt. And ſo for this, that the condition of
part of the grauntee is broken, and the graun-
tour may not enter, the law ſhal put the fee &
franktenement in the grauntour. For if ỳ gra-
tee in this caſe make waſte, then after the
breaking of the cōdition &c. and after the two
yeres, the grauntour ſhall haue his writte of
waſt, and this is a good proofe that the reuerſi-
on is to him &c. But in ſuch caſe of feoffe-
ments vpō condition where the feoffour may
enter lawfully for the condition broken &c.
There the feoffour hath the franktenemēt be-
fore the entre &c.

¶ Alſo if a feoffement bee made vppon ſuche
condition ỳ the feoffee ſhall geeue the lande to
the feoffour, and to the wife of the feoffour, to
haue and to holde to them and to the heires
of their two bodies ingendred, and for de-
faute of ſuch iſſue, to remayne to the right
heires of the feoffour. In this caſe if the huſ-
bande die, liuing the wife before eſtate in the
taple made to him, then ought the feoffee by
the lawe to make eſtate to the wyfe, as lyeth
to the condition, and as like to the entent of
the condition and hee maye make it, that is to
ſay, to let the lande to the wyfe for terme of
lyfe without impechement of waſte, the re-
mainder after her deceaſe to the heires engen-

dzed of the body of her husband & heirs, & for defaut of such issu, the remainder to the right heires of the husband.

¶ And the cause why ỳ lease shalbe made in this case to the woman sole without empechmt of wast, is for this, ỳ the condition is, that the state shalbe made to the husband & his wife in the taile. And if such estate had bin made in ỳ life of ỳ husband, thē after ỳ death of her husband, she hath estate in the taile sole, which estate is without impechmēt of waste, & so it is reason, ỳ if after, a mā may make estate to the intent of the condition &c. ỳ he shal make it &c. though that she cannot haue estate in the taile as she might haue had, if the gift in the tayle had bin made to ỳ husband & to her in the life of her husband &c.

¶ Also in this case if ỳ husbād & ỳ wife haue issue & die before the gift in the taile made vnto thē &c. then ought the feoffee to make estate to ỳ issue, & to ỳ heirz of the father and mother engendzed, & for defaut of such issue &c. the remainder to the right heirz of the husband &c. And ỳ same law is in other places semblable And if such a feoffor will not make such estate when he is reasonably required by them that ought to haue estate by force of ỳ condition &c. Then may the feffour & his heirs enter &c.

¶ Also, if a feoffement be made vppon condition that the feoffee shall enfeoffe many men to haue and to holde, to them and to theyr heires for euer, and all they that ought to

haue

haue estate, dy before any estate made vnto thē then ought the feoffee to make the estate to ye heirz of him ẏ suruiueth of them, to haue & to hold to him, & to ẏ heires of hī ẏ suruiued &c. ¶ Also, if a feffement be made vpon conditiō to enfeoffe an other, or to geue in the tayle to an other, &c. if the feoffee before the performing of the condition enfeoffe a strange person, or make a lease for terme of life, then may ẏ feffour and his heires enter &c. for this, that hee hath disabled himselfe to performe the condition, in so much that he made estate to an other &c. In such manner it is, if the feoffee before the condition performed, let ẏ same lande to a stranger for terme of yeres. In this case the feffour or his heires may enter &c. for this that the feffee hath disabled himselfe ta make estate of the tenements according to that, that was in the tenements when estate thereof was made vnto him, for if hee will make estate according to the condition &c. then may the feoffee for terme of yeres enter & put out hym to whom the estate is made &c. and to occupy this during his terme. And manye haue sayd, that if such a feoffement bee made to a man sole vppon the same condition, and before that he hath performed the condition he taketh a wyfe, then the feoffour or hys heire may incontinent enter, for thys that if hee haue made estate accordinde to the condytion, and after dyeth, his wyfe shalbee endowed and may recouer her dowery by a writ of

powꝛ ꝛc. And ſo by taking of a wife, the tenements be put in other plite then they were at the time of the feoffement vppon condition, foꝛ this that no ſuch woman was dowable, noꝛ ſhoulde be endowed by the lawe ꝛc.

In the ſame maner it is, if the ſcoffoꝛ charge the land by his deede of rent charge befoꝛe the perfoꝛming of the condition, oꝛ be bound in a ſtatute ſtaple, oꝛ ſtatute marchant, that in ſuch caſes, the feoffour and his heires maye entꝛ Cauſa qua ſupꝛa. Foꝛ whoſoeuer commeth to the tenements by the feoffement of the feoffe then the tenementes muſt bee ỹable, and be put in execution by foꝛce of the ſtatute afoꝛeſaid. But when the feoffour oꝛ his heires, foꝛ ỹ cauſes afoꝛeſaid haue ẽtred ſo as they ought as it ſemeth ꝛc. Then all ſuch things ỹ beefoꝛe ſuch entre maye trouble oꝛ incomber the tenemẽts ſo giuen vpon conditiõ, as touching the ſame tenement, be vtterly defeated ꝛc.

Alſo if a man make a dede of feoffement to an other, and in the dede is no condition ꝛc. And when the feoffour will make to him liuery of ſeiſin by foꝛce of the ſame dede, he maketh liuery of ſeiſin vppon certain conditions ꝛc. In this caſe nothing of the tenemẽts paſſeth by the dede, foꝛ this ỹ the condition is not cõpꝛiſed in the dede, & the feoffement is of ſuch foꝛe as if no ſuch dede had bene thereof made ꝛc. Alſo if a feoffement be made vpon ſuch cõdition, ỹ the feoffee ſhal not alien ỹ land to any mã, this cõditiõ is voide, foꝛ this, that when a man

a man is enfeoffed in landes or tenementes, he hath power to alien them to some person by the lawe. For if suche condition shoulde bee good, then the condition putteth hym out of al the power that the lawe geueth, whiche shoulde bee againste reason, and for this suche condition is voide. But if the condytion bee such, that the feffee shal not alien to one such, naminge his name, or to any of his heires, or his issues &c. or such other like, the which condition taketh not away all the power of alienation of the feoffee &c. then such conditinn is good.

Also, if tenements bee geuen in the tayle, vpon suche condition that the tenaunt in the tayle, nor his heires &c. shall not alien in fee, nor in tayle, nor for terme of anothers life, but for their owne lines &c. such alienation & condition is good. And the cause is for this, that when he maketh such alienation and discontinuance, he doth contrarie to the entent, for which the statute of Westminster the seconde was made, by which estatute, the estates in the tayle be ordeined, for it is prooued by the wordes compzised in the same estatute, that ỳ entent of the making of the same statute was that the wil of ỳ donour in such cases shoulde be obserued. And when tenant in the tailemaketh such discõtinuance, he doth the contrary to that &c. And also in estates in the tayle of any tenemẽts whẽ the reuersion of the fee simple is in an other person, whẽ such discõtinuance

ante is made, then the fee ſimple in the reuerſion, or the fee ſimple in the remainder is diſcontinued, and for that, that the tenaunt in the tayle ſhall do no ſuch thing againſt right, ſuch conditions are good, as it is aforeſaid &c.

¶ Alſo a man may geue land in the taile vpon ſuch condition, that if the tenaunt in the tayle or his heires alien in fee, or in taile or for term of anothers life &c. And alſo, that if all the iſſues comming of the tenaunt in the tayle, bee dead without iſſue, that then it ſhal be lawful to the donour & to his heires to enter &c. And by ſuch waye the right of the tayle maye bee ſaued after ſuch diſcontinuance to the iſſue in the tayle if there be any, ſo that by way of entre of ỳ donour or of his heires ỳ taile ſhal not be defeated by ſuch condition, & yet if ỳ tenãt in the taile in this caſe, or his heirs make any diſcontinuance &c. he in ỳ reuerſiõ or his hyirs after this ỳ the taile is determined for defaut of iſſue &c. may enter into the land by force of ỳ ſame condition, and ſhal not be driuen to ſue a writ of Formedon in the reuerſion.

¶ Alſo, a man maye not pleade in an action that eſtate was made in fee, in the taile, or for terme of life vpon condition, but if he vouche a record thereof, or ſhew a writing vnder ſeale prouing the ſame condition, for it is a comimõ erudition & learning, ỳ a man by pleading ſhal not defeat any eſtate of frankteneműt by force of any ſuch condition, vnleſſe he ſhew ỳ proofe of ſuch condition in writing & except it bee in

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ſome eſpeciall caſe, but of chattels reals, as of a leaſe made for terme of yeares, or of graunts of wardes made by wardens in chiualrye, & of ſuch other &c. A mā may pleade þ ſuche giftes or graūtes were made vpon condition &c. wi out ſhewing of any writing of condition, & in the ſame maner a man may do of giftes and graūtes of chatels perſonels & of contractes perſonels &c.

Alſo, though þ a man in ſome action maye not pleade an action that toucheth & cōcerneth franketenement without ſhewing of writinge thereof, as it is afore ſaide, yet a man maye bee holpen vppon ſuche condition by the verdict of twelue mē, taken at large in Aſſiſe of dyſſeyſin, or in ſome other actiō where þ Iuſtices will take the verdict of the twelue iurours at large. As put the caſe that a man ſeiſed of certaine lande in fee, letteth the ſame land for terme of life without deede, vppon condition to yeelde to the leſſour a certayne rent, and for defaut of payment a reentre &c. by force of whiche, the leſſee is ſeiſed as of franketenement, and after the rent is behind, by which þ leſſour entreth into the lande, & after the leſſee arraigneth an aſſiſe of nouel diſſeiſin of the lād againſt the leſſour, the which pleadeth that he doth no wrong, ne no diſſeiſin, & vpon this the aſſiſe is taken.

In this caſe the recognitours of the aſſiſe may ſay & yeld to the Iuſtices their verdit at large vppon al the matter, as to ſaye, that the de=

defendāt was ſeiſed, & ſo ſeiſed, let ỳ ſame lād to the plaintife for terme of his life, to yeld to the leſſour ſuch annuel rent payable at ſuch a feaſt, & vpon ſuch condition, that if the rēt be behind at any ſuch feaſt, ỳ it ought to be paid, ỳ then it ſhalbe lawful to ỳ leſſour to ēter &c. by force of which leaſe ỳ pleintife was ſeiſed in his demeſne as of franktenement, & after ỳ rent was behinde at ſuch a feaſt in ſuch a yere &c. for which the leſſour entred into the lande vpon ỳ poſſeſſiō of the leſſee, & prayeth the diſcretiō of ỳ Juſtices, if this be a diſſeiſin done to the plaintife, or not. And yᵗ for this ỳ it appeareth to ỳ Juſtices, ỳ this was no diſſeiſin done to the plaintife, in ſo much ỳ the entre of the leſſour was lawful vpon him, ỳ Juſtices ought to giue iudgement, ỳ the plaintife ſhal take nothing by his writ of aſſiſe. And ſo in ſuch caſe ỳ leſſour ſhall be holpē, & yet no writing was euer made of the condition, for as wel as the iurours may haue knowledge of ỳ leaſe in the ſame maner may they haue knowledge of ỳ condition rehearſed in the leaſe. In ỳ ſame maner is it of a teſtemēt in fee, or a gift in the taile vpon conditiō, though neuer writing were made thereof &c. And as it is ſaide of a verdit at large in aſſiſe. In the ſame maner it is of a writte of entre founded vppon diſſeiſin, and in al other acciōs where ỳ Juſtices wil take a verdcit a large there where the verdit at large maketh the nature of the matter put in the iſſue.

¶ Also in suche case where ẏ enquest may say their verdit at large, if they will take vpō thē ẏ knowlege of the law vpō ẏ matter, they may say theyr uerdit generall, as it is put in their charge, as in ẏ case aforesaid, they may wel say ẏ the lessor disseised not ẏ lessee if they will &c.

¶ Also in the same case, if the case were such that after this that the lessour had entred for defaut of payment &c. that the lessee had entred vppon thee lessour, and him disseised: In this case if the lessour arrayneth an assise agaynste the lessee, the lessee maye barre him of his assise, for hee maye pleade agaynste him in barre howe the lessour that is plaintife made a lease to the defendant for tearme of life, sauinge the reuersion to the playnteife, the which is a good ple in barre, in so muche that hee knowlegeth the reuersion to be to the playntise, and in this case hath no matter to helpe him, but the condicion made vpon the lease, and that hee maye not plede, for that hee hath no writinge, and in so much ẏ hee maye not aunswere to the barre, he shalbe barred. And so in this case yee maye see that a man is seysed and hee shall haue assise. And yet if the lessee be playntife, and the lessour defendant, hee shall barre the lessee by verdit of the assise. But in this case where the lessee is defendant, if he will not plede the said plee in barre, but pleade no wrong no disseysin, then the lessour shall recouer by assise. causa qua supra.

¶ Also because such conditions be most commonly

monly put & specified in dedes indented, for litle thing shalbe said here (to thee my sonne) of indentures & of a dede poll conteining condicions. And it is to wit þ if the indenture be bipertite or tripitite or quadripartite, al þ parts of the indenture be but one dede in the law & euery parte of the indenture is of him selfe of as great force and effect, as all the parts together. And the making of indentures is in two maners. One is to make thē in the third person, another maner is to make thē in the first person. The making in the third pson, is as in such forme. This indenture made betwene A. of B. of the one part, & C. of D. of the other parte, witnesseth þ the foresaid A. of B. hath geuen & graunted, & by this present dede indēted, hath confirmed to þ foresaid C. of D. such land, to haue &c. vpon þ condition &c. In witnes whereof the parties beforesaid interchāgeably haue put to their seals, or els thus: in witnes whereof to þ one part of this indēture remaining with þ said C. of D. þ foresaid A. of B. hath put to his seale, & to the other part of the said indēture remaining w̄ the said A. of B the sayde C. of D. hath put to his seale geuen &c. Such indentures are called indentures made in the third person, for this that þ verbes be in the third person, & such forme of indenture is the more sure making, for þ it is more cōmonly vsed, the making of indentures in the first person is in such forme.

¶ To al true christian people to whom this

presēt

presēt writing indented shall come A. of B. greting in our lord euerlasting. Know ye, me to haue geuen & graūted, & by this my presēt dede indented to haue confirmed to C. of D. such land &c. Or els thus, know all men that be presēt, & them ỳ be to come, ỳ I A. of B. haue geuē & graūted, & by this my presēt dede indēted haue confirmed to C. of D. such lande &c. to haue &c. vpon ỳ condition following. In witnes whereof as well I the said A. of B. as the aforesaid C. of D. to these indentures interchāgeably haue put to their seales, or els thus. In witnes whereof to one part of this indenture, I haue put to my seale, & to the other part of the same indenture the foresaide C. of D. hath put to his seale &c.

¶ And it seemeth ỳ such an indenture made in the first person, is as good in the lawe as ỳ indenture made in the third person, whē both parties haue thereto put their seales, for in the indēture made in the third persō or in the first person, if mencion be made that the grauntour hath set his seale onely, and not the grauntee, then is the indenture onelye the dede of the grauntour. But where mencion is made ỳ the grauntee hath set his seale to the indēture &c then is the indenture as wel the dede of ỳ grauntour, as the dede of the grauntee, and thus it is the dede of both, & also euerye part of the indenture is the dede of both parties in such case &c.

¶ Also if estate bee made by indenture to a man

man for terme of his life, the remainder to an other in fee vppon condition &c. and if the tenant for terme of life hath set his seale to one part of the indenture, and after dyeth, and hee in the remainder &c. entreth by force of his remainder, in this case he is holden to performe all the conditions comprised wythin the indenture, as the tenant for terme of life ought to do in his life. And yet he in the remainder neuer sealed any part of the indenture, but the cause is that in so much that hee entreth and agreeth to haue the land by force of ỳ indenture, hee is holden to performe the condition within the indenture if he will haue the land &c.

¶ Also if a feoffement be made by deede Poll vppon condition &c. And for this that the condition is not performed, the feoffour entreth and happeth the possession of the deede poll, if the lessee bring an action of that entre against the feoffour, it hath beene a question if the lessour may plede the condition &c. by the deede poll against the feoffee, and some haue sayde nay, in so much that it seemeth vnto thē that a deede pol, and the propertie of the same dede appertaineth to him to whome the deede is made, and not to him that made the dede. And in so much that such a dede appertaineth not to the feoffour, it seemeth to them that he may not plede this deede &c. And other haue saide the contrarie, and haue shewed diuers causes. One is, if the case be such ỳ in the action betweene

twene them the feoffee plede the same dede, & shew this to ꝑ court. In this case in so muche ꝑ the dede is in the court, the feffor may shew to the court how in the dede be diuers conditions to be performed of the part of the feoffee, & for this ꝑ they be not performed hee entred &c & thereto he shalbe receiued, by ꝑ same reason when the feffour hath the dede in hand & sheweth it to the court he shalbe wel receiued to plede of this &c. And namely when the feffour is ꝑtie to the dede, for he ought to be ꝑtie to the dede, when he made the dede.

¶ Also if two men make or do a trespasse to another, the which releaseth, to one of them by his dede, all actions personels &c. Notwithstanding he sueth an action of trespas against the other, the defendant may wel shew that the trespas was done by him & another his felow, & that the plaintife by the dede that he sheweth forth releaseth to his fellowe all actions personels, & yet such dede appertaineth to his fellowe & not vnto him, but for this that he may haue aduantage by the dede, if hee will shew the dede to the court, hee maye well plede &c. Therefore by the same reason in the other case, whē ꝑ feoffor ought to haue aduantage by the cōditiō cōprised with the dede poll.

¶ Also if the feoffee gaue or graunted the dede poll to the feoffour, such graunt shal bee good, and then the dede & the ꝓperty of the dede appertaineth to the feoffour. And when the feoffour hath the dede in hande, and plea-

deth it to the court, it shalbe rather vnderstanded that he came to the dede by a lawfull mene then by a tortious meane, & so it semeth ỳ they may well plead such a dede poll, ỳ comprehendeth condition &c. if hee haue the dœde in hãd &c. Ideo semper quere de dubys, quiap rationes per uenitur ad legitimam rationem.

¶ Estates that men haue vpon condition in the lawe be such estates that haue a condycion in the lawe annexed to them. though it be not specified in writinge, so as a man graunte by his dede to another the office of a Parkershippe of a Parke, to haue and to occuppe the same office for tearme of his life, the estate that hee hath in the office, is vpon condition in the lawe, that is to saye, that the Parker well and truelye shall kepe the parke, and doe that, that to the office appertaynethe to doe, or otherwise that it shall bee lawfull to the grauntour and to his heires to put him out, and to graunte that to another if hee will &c. And suche condition as is vnderstode by the law to be annexed to some thing, is as strõg as if the condition were set or put in writing, In the same maner it is of grauntes of offices of stewardes, constables. bedels, baylifes, and other officers. But if suche office be graunted to a man to haue and to occuppe by him or by his deputy, then if the office bee occuppyed by him or by his deputye as it ought by the lawe to bee occuppyed, this suffiseth for him, or els the grauntour or his heires may put him out

as

as is aforesaid.

¶ Also estates of lāds or tenemēts may be vpon cōditiō in ỳ law, though ỳ vpon the estate made, there was no rehersal made of ỳ condition. As put the case ỳ a lease bee made to the husbād & his wife, to haue & to holde to them during the touerture betweene thē, in this case they haue estate for terme of their 2. liues vpō cōditiō in ỳ law, that is to say, if one of thē die, or if deuorce be made betweene thē, that then it shalbe lawful to the lessor & his heires to enter &c. & that they haue estate for terme of their two liues it is proued thus. Euery man that hath estate or frankteneмēt in any lāds or tenements, either he hath estate in fee, or in fee taile, or for terme of life, or for tem of anothers life, & yet by such lease they haue frankteneмēt. But they haue not by this grāt, fee nor taile, nor for term of anothers life. Ergo they haue estate for terme of their two liues, but this is vpon condition, in the law in forme aforesaide. And in this case if they make waste, the lessor shal haue against them a writ of wast, supposing by his writ. Quod tenent ad terminū vitæ &c. but in his plee, he shall declare how & in what maner the lease was made. In the same maner it is if an Abbot make a lease to a man to haue & to hold during the time that ỳ lessour is Abbot. In this case ỳ lessee hathe estate for terme of his owne life, but this is vppon condition in law, that is to say, that if the Abbot dye, or resigne: or be deposed, it shalbe lawful

to his successours to enter &c. Also a mā maye see in the booke of assises. An. 38 E. 3. a plee of assise in this forme that ensueth. Assise of nouel disseisin was sometime brought against one A. ẏ pleded to the assise, and was found by verdit ẏ the aūcester of ẏ pleintife deuised the tenemēts to be sold by the defendant that was his executor to make distributiō of the money for his soule, & it was foūd that a man after ẏ death of ẏ testator tendered him a certain sūme of money for the tenemēts but not to the value and ẏ the executour after helde the tenements in his owne hand by two yere, to the intent to haue solde the tenements more deerer to some other, and it was found that hee had all the whyle after taken the profites of the tenementes to his owne vse, without any thinge doing for the soule of the dead. Monbray, the executour in such case is holden by the lawe, to make the sale as soone as he maye after the death of the testatour and it is found that hee refused to make the sale, and so the defaut was in him, and also by force of the deuise hee was holden to haue put al the profites of the sayd tenements to the vse of the dead, & it is found, that he hath taken them to his owne vse, and so another defaut is in him, wherfore it was adiudged that the pleintife should recouer &c. And so it appeareth in the said iudgement ẏ by force of the saide deuise the executour had none estate nor power in the tenementes but vpon condition in the lawe &c. And in such ca-

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ses it needeth not to haue shewed any dede rehearsing ẏ conditions &c. Ex paucis dictis, intēdere plurima possis. More shalbe said of cōditions in the Chapter of Discents that take away entre, & in the Chapter of releases, & in the chapter of Discontinuance.

¶ Discents.

DIscents that take away entres be in two maners, that is to say, where the discent is in fee or in fee taile. Discent in fee that taketh away entre is if a man seised of certaine lands or tenementes, is disseised and the disseisour hath issue & dyeth of such estate seised: Nowe the tenements discend to the issue of the disseisour by course of ẏ law as heire vnto him. ¶ And for this that the law putteth ẏ lands or tenements vppon the issue, & the issue commeth to the tenements by course of the lawe and not by his owne dede, the entre of the disseisee is taken away, and is therof put to hys writ of entre vpō disseisin against the heire of the disseisour to recouer the land.

¶ Discent in the taile that taketh awaye entre is, if a man be disseised, and the disseisor geeueth the same land to another in the tayle, and the tenaunt in the tayle hath issue and dieth seised of such estate, and the issue ētreth, in this case the entre of the disseisie is takē away, and hee is put to sue agaynste the issue of the tenant in the taile a writ of Entre vp-

por disseisin &c.

¶ And note well that in suche discentes that take away entres, it behoueth that a man dye seised in his demesne as in fee taile, for dyinge seised for terme of life or for terme of anothers life, shall neuer take away the entre &c.

¶ Also a discent of reuersion or of remainder shall neuer take away entre &c. so þ in such cases that take away entres by force of discents it behoueth that he that dyeth seised haue fee & franketenement at the time of his dyinge, or els such discent taketh not away entre.

¶ Also as it is saide of discets þ discend to the issue of him that dyeth seised, &c. the same law is where they haue no issue, but þ tenemts discend to ꝑ brother, or to the sister, or to þ vncle or to some other cosin of him þ dyeth seised &c.

¶ Also if there be Lord & tenant, and the tenant be disseised, & the disseisour alieneth to another in fee, & the alienee dyeth without heire, & the Lorde entreth as in his escheat: In this case the disseisee may enter vpon the Lord, for this þ the Lorde commeth not to the lande by discent, but by escheate.

¶ Also, if a man seised of certain lande in fee, or in fee taile vpon condition to yelde certayne rent, or vpō other cōditō, though that such tenant seised in fee or in fee taile dye seised, yet if þ conditiō be broken in their life, or after their decease &c. this taketh not away the entre of þ feoffour, nor of the donor, or of their heirs, for this that the tenancy is charged with the cōditiō

dition, and the estate of the tenancy is condi-
tionel in whose hands soeuer the tenancy shal
come &c.

Also, if such a tenant vpon condition be dis-
seised, & the disseisor dy therof seised, & the lād
discedeth to ỳ heyre of ỳ disseisor, now the en-
tre of ỳ tenaunt vpō condition ỳ was disseised,
is taken away, but if the condition be broken
&c. then may the feoffour or the donor ỳ made ỳ
estate or their heirs enter &c. causa qua supra.

¶ Also, if a disseisor dy seised, & his heirs en-
ter &c. the which ēdoweth the wife of the dis-
seisor of the third part of ỳ tenements, in this
case, as to the thirde that is assigned to ỳ wife
in dower, incontinent anon after that the wife
entreth & hath possessiō of ỳ same third part,
the disseisee may lawfully enter vpon the pos-
session of his wife in the same third part. And
the cause is for this, that when the wife hath
her dower, shee shalbe adindged in rather im-
mediately by hir husband thē by the heire, & so
as to ỳ franktenemēt of ỳ same third part, the
discent is defeated, & so ye may see how before
the dowemēt the disseisee might not enter in
any part &c. & after the dowement he may en-
ter vpon the wife, & yet he may not enter vpō
the other two parties that ỳ heire of the dis-
seisour hath by discent &c.

¶ Also, if a woman be seysed of lande in fee
whereof I haue right and title to entre, if the
woman take an husbande and haue issue bee-
twene them, and after the wife dyeth seised

and after that the husbande dieth, & ỳ issue entreth &c. in this case I may enter vpon ỳ possession of the issue, for this that the issue commeth not to ỳ tenements immediately by discent after the death of his mother.

¶ Also if a disseisour en eode his father, & ỳ father entreth & dyeth of such estate seised, by which the tenements discend to the disseisour as to the sonne & heire &c. In this case ỳ dysseisee may wel enter vpon the disseisour, notwithstanding the discent, for this, ỳ as to the disseisin, the disseisour shalbe adiudged in but as the disseisour, notwithstanding the discent.

¶ Also if a man seised of certaine landes in his demeane as of fee, hath issue two sonnes and dyeth, and the ponger sonne entreth by abatement in the lande, the which hath issue & of this dieth seised, and the tenementes discende to the issue, and the issue entreth into ỳ land, in this case the elder sonne or his heires may enter by the lawe vppon the issue of the ponger sonne, notwithstanding the discent, for this, that when the ponger sonne abated in the lande after the death of his father, before any entre of the elder, the lawe intendeth that he entreth in claiming as heyre vnto his father, and for this that the elder brother claymeth by the same tytle, that is to say, as heire vnto his father, he and his heires may enter vpon the issue of the ponger brother notwithstanding the discēt &c: for this that they clayme by one selfe title: And in the same ma-

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ner it shalbe if there be many discents frō one
issue to another issue of ỳ yoger sonne &c. But
in such case if the father were seised of certain
lāds in fee, & hath issue ij. sōnes & dieth, & ỳ el-
der sōne ētreth & is seised &c. And after ỳ yō-
ger brother disseiseth him, by which disseisin
he is seysed of fee, and hath issue and of suche
estate dyeth seised, then the elder brother may
not enter, but is put to his writ of entre vpon
disseisin for to recouer the land. And the cause
is for this, that the yonger brother commeth
to the tenements by a wronge disseisin made
vnto his elder brother. And for that wrong
ỳ law may not entend ỳ he claimeth as heire
to his father no more then if a strange person
had disseised the elder brother that neuer had
any title &c. And so may ye see the diuersitye
where the yonger brother entreth after the
death of his father, before any entry made by
the elder brother in such case &c. and where
the elder brother entreth after the death of his
father, and is disseised by the yonger brother,
&c. In the same maner if a man seised of cer-
taine lande in fee, hath issue two daughters,
& dieth, & the elder daughter entreth in ỳ land,
claiming al the lande to her, and thereof onely
taketh the profites, and hath issue and dyeth
seysed, by which her issue entreth, which issue
hath issue and dyeth seised, and the second is-
sue entreth &c. et sic vltra. Yet the younger
daughter and her issue as to the halfe may
enter vppon euerye issue of the elder daughter,

not

notwithstãding such discẽt, for this that they claime by one selfe title &c. But in suche case if both two sisters come into the land to enter after the death of their father, & thereof weare seised, and after the elder sister thereof disseised the ponger sister of that, ꝑ to her belongethe, & therof is seised in fee, & hath issue, & of such estate dieth seised, by which the tenements discend to the issue of the elder sister, then the põger sister or her heirs may not enter &c. Cause qua supra.

¶ Also. if a man seised of certayne land hath issue two sonnes, and the elder brother is bastarde, and the ponger brother mulier and the father dieth, and the bastarde entreth and claimeth as heyre vnto his father, and occuppyeth the lande all his life without anye entre made vpõ them by the mulier, and the bastard hath issue and dieth of such estate seysed in fee, and the lande discendeth to his issue, and his issue entreth &c. in this case the mulier is without remedy, for he may not enter, nor he shal haue no accion for to recouer the land, for this that it is an auncient lawe in suche case vsed, But it hath ben an oppinion of some men that that shalbe vnderstood wheare ꝑ father hath a sõne a bastard by a woman, and after hee weddeth the same woman, and after the espousayle hee hath issue by ꝑ same womã a sõne or a daughter mulier, & the father dieth &c. If such a bastarde enter &c. and hath issue, and dyethe seysed &c. Then shall the issue of suche a bastarde haue

haue the land clerely to him as it is afore saide &c. And not any other bastarde borne of ỳ mother that was not espoused to his father, and this is a good & reasonable opinion. For such a bastarde borne before ỳ espousals solẽpnised betweene his father & his mother by the lawe of holy churche, is mulier, though that by the lawe of the land he is a bastarde borne, and so he hathe colour of entre as heire to his father, for this that he is by one lawe mulier, that is to say, by the lawe of holy church. But otherwise it is of a bastard that hath no manner of colour to enter as heyre, in so muche that he may not in no lawe be said mulier &c. for such a bastarde is saide quasi nullius filius. But in suche case afore sayde, where the bastarde entreth after the deth of his father, and the mulier putteth him out, & after the bastard disseiseth the mulier, & hath issue, & dieth seysed, and the issue entreth, then the mulier may haue a writt of Entre vppon disseisin againste the issue of the bastarde, & recouer the land &c. And so may ye see the diuersitye where such a bastard continueth his possession al his life without anye interruption, and wheare the mulier entreth & enterrupted the possession of suche a bastarde.

¶ Also, if a child within age haue title & cause to enter into anye landes or tenements vpõ an other ỳ is seised in fee or in fee taile of the same lads or tenemẽts, if such a mã ỳ is so seised die

of

of ſuch eſtate, ſo ſeiſed, and the tenements diſcend to his iſſue during the time that ꝑ childe is within age, ſuch diſcent ſhal not toll the entre of the childe, but he may enter vpon the iſſue that is in by diſcent &c. for this that no laches ſhalbe adiudged in a child within age in ſuch caſe &c.

¶ Alſo if the huſband & his wyfe, as in right of the wife haue title and right to enter in the tenementes that another hath in fee, or in fee tayle, & ſuch a tenant dyeth ſeiſed &c. In ſuch caſe ꝑ entre of ꝑ huſband is taken away vppō ꝑ heire that is in by diſcent. But if ꝑ huſband die, thē the wife may wel enter vpon the iſſue by diſcent, for this that the laches of the huſband ſhal not turne to the wife & to her heire in preiudice nor in dāmage in ſuch caſe, but ꝑ ꝑ wife & her heires may wel enter where ſuch diſcent is during the conuerture &c.

¶ Alſo if a man that is not of whole minde, that is to ſay in latin. Qui nō eſt compos mētis, hath cauſe to enter in any ſuch tenements if ſuch diſcēt vt ſupra, be had in his life during the time that he was out of his minde, & after die, his heires may wel enter vppon him that is in by diſcent. And in this may ye ſee a caſe ꝑ the heire may enter, & yet his auncеſter that had the ſame title may not enter, for he ꝑ was out of his minde at the time of ſuche diſcent, if he wil enter after ſuch a diſcent, if accīō vpō this be ſued againſt him, he hath nothing for him to plede, or to helpe him, but ſay ꝑ he was

out

out of mind at ỳ time of such discēt &c. And he shall not be receiued to say this, for this ỳ no mā of ful age shalbe receiued in any plē by the law to disalt or disable his own pson. But ỳ heire may wel disable the person of his aūcestor for aduantage of the heire in such case, for this ỳ the laches may be adiudged by the law in him ỳ hath no discretiō in such case. And if such a man out of his minde make a feoffemēt &c. he may not enter ne haue a writ called Dū nō fuit compos mentis &c. Causa qua supra. But after his death, his heire may welēter or haue the same writ, Dum non fuit compos mentis at his election &c.

¶ Also if I be disseised by a child within age ỳ alieneth another in fee, & the alienee dieth seysed, & the tenementes discende to his heire, the child being within age, mine entre is tabē awaye, But if the childe within age entre vpō ỳ heire ỳ is in by discēt as he wel may, for this ỳ the discent was during his nonage, then I maye wel enter vpon the disseisour, for this ỳ by his entre he hath defeated & annulled the discent. And in the same maner it is where I am seised, and the disseisour maketh a feoffement in fee vppon condition, &c. And the feoffee dyeth of such estate seysed &c. I may not enter vpon the heire of the feoffee. But if the condition be broken so that by such cause the feoffour entreth vpon the heire, now may I well enter, for this that when the feoffour or his heires enter for the condition broken, the discent is

vtterly

vtterlye defeated.

¶ Also if I bee disseysed, and the disseysour hathe issue and entreth into religion, by force of which the landes discende to his issue, in this case I may wel enter vpon the issue, and yet ther was a discent: But for this that such discente commethe to the issue by the fathers deede, that is to saye, for this that hee entred into religiõ &c. & his discẽt cõmeth not to him by the deede of God that is to say, e by deathe &c. mine entre is congeable, and lawfull, for yf I arraine an assise of Nouel disseisin agaynst my disseisour, though that hee after enter into religiõ this shall not abate my writt. But my writt this notwithstanding, shall abide in his force and strength, & my recouery against him shallbe good, by the same reason ỹ discent that came to his issue by his owne deede maye not put me from my entre &c.

¶ Also if I let to a man certayne landes for terme of twenty yeares, and another disseiseth me, and putteth out the termor, and dieth seised and the tenements discend vpon his heyr, I may not enter, and yet the lesse for terme of yeares may well enter, for this that by his entre hee putteth not out the heire that is in by discent frõ ỹ franktenemẽt ỹ vnto him discended, but only claymeth to haue the tenements for terme of yeres, the which is no expulsinge of the franketenemente of the heire that is in by discent. But otherwise it is where my tenaunt for terme of lyfe is disseised &c. Causa

qua

qua supra &c.

¶ Also it is said ỳ if a mā be seised of tenemēts in fee by occupation in time of warre, & dyeth thereof seised in time of warre, & the tenemēts discēd to his heire, such discent putteth out no man of his entre. And of this a man may see a ple in a writ of Aper. Hn. 7. E. 2.

¶ Also ỳ no dying seised (where al ỳ tenemēts come to another by succession) shal take away the entre of anye person &c. For of prelates, Abbots, Priors, Deanes, or Persōs of churches &c. though that there weare pr. successors this putteth no man from his entre &c. More shalbe said of discents in the chapiter of continual claime &c.

¶ Continual claime.

Continuall clayme is, where a man hathe ryghte and title to enter in any landes or tenementes whereof another is seised in fee, or in fee tayle, if hee that hath title to enter make continual claime to the lands and tenements, before the dying seised of him that holdeth ỳ tenemēts. Then though such a tenāt dye ther of seised, and the lands & tenemēts discend to his heire, yet maye hee that hath made suche claime or his heyres enter into the lands and tenementes discended, because of the continuall clayme made, notwithstandinge suche dissent. As in case a man be disseysed, & the dissesy maketh continual clayme to the tenements in the

in the lyfe of the disseisour though the disseisour die seised in fee, & the land discendeth vnto his heires, yet may the disseysie enter vpon the possession of the heire, notwithstandinge such discent.

¶ In the same maner it is, if tenāt for terme of life alien in fee, he in the reuersion, or hee in the remainder may enter vpō ỳ aliene. And if such aliene dy seised of such estate without cōtinuall claime made to the tenemēts before the dying seised of the aliene, & the tenements because of the dying seised of the aliene, discende vnto the heire of the aliene, then may not he in the reuersiō, nor he in ỳ remainder entre. But if he in the reuersion or he in the remainder ỳ hath cause to enter vpon the aliene, made cōtinuall claime to the tenements before the dying seised of the aliene, then such a man may enter after the death of ỳ aliene, as wel as he might in his life &c.

¶ Also if lands bee let vnto a man for terme of his life, the remainder vnto another for terme of life, the remainder vnto the thirde in fee, if the tenant for terme of life alien to another in fee, and hee in the remainder for terme of life maketh continuall claime vnto the land before the dying seised of the aliene, & after ỳ aliene dieth &c. and after hee in the remainder for terme of lyfe dyeth before any entre made by him.

¶ In this case he in the remainder in fee may enter vppon the heire of the aliene, becaus

cause of cõtinual claime made by him that had ꝑ remainder for term of life, for this that such right that he hath to ẽter, shal go & remaine to him in ꝑ remainder after him, in so much that he in the remainder in fe, may not enter vpõ ꝑ aliene in fee during ꝑ life of him in the remainder for terme of life, and because he might not make cõtinual claime, for none may make cõtinual claime but whẽ he hath title to ẽter: But it is to be shewed thee my child how & in what manner suche continual claime shalbe made & to lern this, iij thigs ther be to be vnderstood. ¶ The first thinge is, if a man haue cause to enter in any lands or tenemẽts in diuers townes within one shire, if he enter in any parcell of the lands or tenemẽts that bee in one toun in the name of all the landes or tenementes to whiche he hath righte to enter within all the towns in the same shire, by such entre he hath as good possession & seisin of such lands or tenemẽts wherof he hath title to enter, as if hee had entred into euery parcell, and this semeth great reason for if a man wil enfeoffe another without dede. of certain lãds or tenemẽts that he hath in many townes within one shire, and he wil deliuer seisin to the feoffee of parcell of the tenementes within one town in the name of all the lands & tenementes that hee hath in the same towne, and in all other townes &c. all the said tenementes &c, shal passe by force of the saide liuerye of seisin to him to whome such feoffemẽt in such mãer is made. And yet

he to whom such liuery of seisin is made, hath no right to all the land & tenements in all the townes, but by reasō of the liuery of seisin made of parcel of the lāds or tenemēts in one towne a multo fortiori. It semeth good reasō ỳ whē a man hath title to enter into lāds or tenemēts in diuers townes in one shire before any entrye by him made, ỳ by ỳ entry of him made in parcel of the tenemēts in one town in the name of al ỳ lands & tenemēts to the which he hath title to ēter in the same shire, this is a seisin of al in him, & by such ētre he hath possessiō & seisin in dede, as if he had ētred into euery parcel &c

¶ The second is to vnderstand, that if a man hath title to enter into any lāds or tenemēts, if he dare not enter into the same lands or tenements, nor in any parcel therof for doubt of beating, or for doubt of maiming, or for doubt of both, if he go & approch as nigh ỳ tenemēts as he dare for such doubt, & claime by wordes, the tenements to be his, incontinent by such claime he hath a possession & seisin in the tenementes, as well as if he had ented in dede, thoughe he had neuer possession or seisin of the same lands or tenemēts before the saide claime And that the law is such, it is wel proued by a ple of an Assise in the booke of Assises, An. 38. E. 3. The tenure of which ensueth in this forme.

¶ In the Countye of Dorset before the Justices it was founde by verdit of Assise, that the plaintife which had right by discent

of

of heritage, to haue the tenemẽts put in plaint at the time of the death of his aũceſter which was dwelling in the towne where ẏ tenemẽts were, & by worde claimeth the tenementes among his neighbors, but for doubt of deth hee durſt not approche vnto the tenemẽts, but bringeth an aſſiſe, & vpon the matter found, it was awarded that he ſhould recouer.

¶ The 3 thing is to vnderſtãd within what time & by what time the claime ẏ is ſaid cõtinual claime ſhal ſerue & helpe him ẏ made the claime & his heir. And as to this it is to wete that he ẏ hath title to enter, whẽ he will make his claime, if he dare approch vnto ẏ land, then it behoueth him to go vnto the land, or to parcel of it, and make his claime. And if he dare not approche vnto the land for dread of beting, maiming or deth, thẽ it behoueth him to go, & to approch as nigh as he dare toward the lande or parcel thereof, & make his claim. And if his aduerſary that occupieth the land, die ſeiſed in fe, or in fee taile within a yere and a day after ſuch claime made, by which the tenemẽts diſcend vnto his ſõne as heire vnto him, yet may he that made the claim, enter vpõ the poſſeſſion of the heires. But in this caſe after the yere & the day that ſuche claime was made, if none other claime be made, if the father thẽ die ſeiſed ẏ morow after ẏ yere & the day, or at another day after &c. thẽ may not he that made the claim enter. And therefore if he that made the claime, will be ſure all way that hys entre

shal not be taken awy by such discēt, it behoneth him that within the yere & the day after ẏ first claim, to make another claim in ẏ forme aforesaide And within the yere & the day after ẏ second claime, to make the third claime in the same māner, & within the yere & ẏ day after ẏ third claime, to make anotoer claim &c. that is to say, to make another claime within euerye yere & day next after euery claime made durig the life of his aduersarye, & then at what time ẏ his aduersary dye, his entre shal not be takē away by discēt. And such claime made in such māner is most cōmonly taken & called cōtinuall claime of him that made the claime. But yet in case aforesaid, where his aduersary dyeth within the yere & the day next after ẏ first claime this is in the law a continuall claime. in so much ẏ his aduersary died within ẏ yere & ẏ day after the same claime for it is no nede for him ẏ made the claime, to make any other claime, but at what time that he wil within ẏ same yere & the day &c.

¶ Also if his aduersary be disseised within ẏ yere & day after the claime, & the disseysour dieth thereof seised within ẏ yere & the day &c. This dying seised shal not hurt him ẏ made claime, but that he may enter For who soeuer he be that dieth seised within ẏ yere and the day after such claime, that shal not hurte him that made the claime, but that he may enter though there were many dyings seised and many discents within the yere and the day.

¶ Also

¶Also if a man be disseised, & the disseisor dy seised within the yere & the day next after the disseisin done, whereby the tenements discend to his heire, in this case the entre of ỳ disseisee is taken away, for the yere & the day ỳ shoulde helpe ỳ disseisee in such case &c. shall not be taken frō ỳ time of the title of entre growē vnto him, but only frō ỳ time of ỳ claime by hym made in time aforesaid, & for ỳ cause it shalbee good for such a disseisee for to make his claime &c. in as short time as he maye after ỳ diss. &c.

¶Also if such a disseisour occupy the land by yeres without any claime made by the disseisee &c. & the disseisee by litle space before the death of the disseisour make claime in ỳ forme aforesaid, if so it fortune that within a yere & a day after such claime the disseisour die seised &c. the entre of the disseisee is congeable, & for this it shall be good for such a man ỳ made noe claime that hath tytle to enter &c. When hee heareth that his aduersary lyeth sicke to make his claime &c.

¶Also as it is said in the cases put beefore where a man hath title to entre beecause of a disseisin &c. The same lawe is where a man hath right to entre because of the title &c.

¶Also in the said presidents maye ye knowe my child two thinges. One is where a man hath title to entre vpon a tenant in taile, if hee make any such claime vnto the land &c. Then is the state of the taile defeated, for that claim is as an entre made by him, & is of the same ef-

ect in the law as if he were vpō the same te-
nements, & had entred in the same tenements
as is afozesaid. And then when the tenant in
taile immediately after such claime continueth
his occupatiō in ý tenemēts, this is a disseisin
made of the same tenementes vnto hym that
made the claime. Et sic per consequens, the te-
nant then hath fee simple &c.

¶ The second thing is, ý as oft as he ý hath
right to enter maketh such claime, & this not-
withstanding his aduersarie cōtinueth his occu-
pation &c, so oft ý aduersary doth wrōg & dis-
seisin to him that made ý claime. And foz this
cause so often may he that made the same claime
foz euery such wrong and disseisin made vnto
him, haue a writ of trespas. Quare clausū ipsīus
fregit, &c. to recouer his dammages, &c. Oz he
may haue a writ vpon the statute of king Ri-
chard the secōd, made the v. yere of his raigne
supposing by his writ, ý his aduersarie hathe
entred into the lands oz tenemēts of him that
made ý claime where his entre was not geue
by the law &c. & by such accion he shall recouer
his dāmages &c. And if the case be such that
the aduersary occupy the tenemēts with foze
& armes, oz with a multitude of people at the
time of such claime &c. Thē may he that made
the claime, foz euery such time haue a writ of
Forcible entre & recouer his treble dāmages.

¶ Also, here it is to se if the seruant of a mā
that hath title of entre, may by the commaun-
dement of his maister, make continuall claime

foz

for his master in his name, & it seemeth that in some cases he might do this, for if he by his cõmandement come to any parcel of the land, & there maketh claime &c. in the name of hys maister, this claime is good for his master, for this that he hath done al that it behoueth his maister to do in such case &c.

¶ Also if a master say vnto his seruant þ he dare not go into the lãd nor into any parcel of the land for to make his claime &c. & dare not approch more nigh vnto the same lãd, saue to such a place called dale, and commaundeth his sernãt to go to the same place of Dale, & there to make a claime for him &c. if the seruaunt do &c. this seemeth as good claime for his master as if he had bene there in his owne person, for þ the seruant did al that his master durst do & ought to do by the law in such case.

¶ Also if a man be so sicke or so lame, that he may not in any maner come to the land, nor to any parcel of the same, or if there bee a recluse that he may not because of his order go out of his house &c. if such a maner of persõ cõmand his seruaunt to go and make claime for hym &c. and the seruaunt dare not go to the lande, nor to any parcel therof for doubt of beating, mayme, or death, and for that cause suche seruant commeth as nigh to the lande as he dare for suche dreade, and maketh his clayme &c. for his master, it seemeth that such clayme for his master is good, and strong in law, for els his master should be in two great mischief, for

it may wel be that such a person ỳ is sicke or lame, or recluse, cannot finde any seruant that dare go vnto the land, nor to any parcel of it to make the claime for him &c. But if the maister of such a seruant be in good health, & may and dare wel go to the tenements, or to parcel of it to make his claime for him &c. if such a master cõmaunde his seruant to go to some parcel of the land & make claime for him &c. And when the seruant is in going to do the commaundemẽt of his master, he heareth by the way such things that he dare not go to any parcell of ỳ lande for to make any claime for his maister, & for that cause he goeth as nigh vnto the lande as he dare for doubt of death, & there he maketh claime for his maister in the name of his maister &c. It seemeth that ỳ doubt in ỳ law in such case shalbe if such claim auaile his master or not, for this ỳ ỳ seruãt did not all that his master at the time of cõmaundement durst to haue done.

¶ Also some haue said, that where a man is in prison & is disseised, and the disseisour dieth seised, duringe the time that the disseisee is in prison, by which tenements discend to ỳ heire of the disseisour, they haue said that this shall not hurt the disseisee that is in prison, but that he may wel enter notwithstanding such discẽt for this that he may not make cõtinual claime when he was in prison. And also if such a one that is in prison bee outlawed in an accion of Det or Trespasse, or in appele of robery &c.

hee

he shal reuerse such outlawry by writ of Error &c. because he was in prison at the time of the outlawry against him pronounced.

¶ Also if a recouery be had by discēt against such a one ỳ is in prisō, he shal auoide ỳ iudgement by a writ of Ecrour, for this ỳ hee was in prison at the time of such default made &c. and because ỳ such matters of record shal not hurt them ỳ be in prisō, but ỳ it shalbe reuersed &c. A multo fortiori, It semeth ỳ a matter in deede, ỳ is to say, such discent had when hee was in prison, shal not hurt him &c. specially for this ỳ he may not go out of prison to make continual claime &c.

¶ And in the same maner it seemeth to them where a man is out of ỳ realme in ỳ kings seruices for busines of the realme, & if a man bee disseised when he is in the seruice of the king, ỳ such discent shal not hurt the disseisee, but for this ỳ he might not make cōtinual claime &c. it semeth vnto them ỳ when hee commeth againe into England, he may enter again vpon the heire of ỳ disseisor &c. For such a mā shall reuerse an outlawry ỳ is pronounced against him during the time ỳ he is in seruice &c. ergo a multo fortiori, He shall haue aide by the law in the other case &c.

¶ Also other haue said, that if a mā be out of the realme, though he be not in the kings seruice, if such a man being out of the realme bee disseised of landes or tenementes within the realme, and the disseisour dye seised &c. the dys-

seisee

seisee being out of the realme it seemeth vnto them that when the disseisee cometh into ỳ realme, that he may well enter vpon the heire of the disseisour &c. & this seemeth vnto them for two causes.

One is, ỳ he that is out of the realme, may not haue knowledge of ỳ disseisin made vnto him by vnderstanding of the law, no more thē that a thing done out of the realme may be tried within the same realme by the oth of xij. mē & to cōpell such a mā to make continual claime which by the vnderstāding of the law, cā haue no knowledge or cognisance of suche disseisin made or done, this shalbe incōueniēt: namely when such a disseisin is done vnto him, when he was out of the realme. Also ỳ dying seised was done when he was out of the realme, for in such case he may not by possibilitie after the cōmon presūption make no continuall claime, but otherwise it shalbe if the disseisee were within ỳ realm at ỳ time of the disseisin, or at the time of the dying seised of the disseisor &c. Another matter they alleaged for a proofe, that before the statute of king Ed. the third, made the .34. yeare of his raigne, by which statute nō claime is out &c. ỳ lawe was such, that if a fine were leuied of certaine lands or tenements, if any that was a stranger to the fine had right to haue and to recouer the sāe lāds or tenemts if he came not & made his claim thereof within a yere and a day next after the fine leuyed, he shalbe barred for euer. Quia dicitur finis

quod

quod finē litibus inponebat. And that the law was such, it is proued by the statute of westm̄ the second. de donis conditionalibus, where i speaketh, if the fine be leuied of tenemēts g æ-uē in ẏ taile &c. Quod finis ipso iure sit nullus nec habeant heredes aut illi ad quos spectat reuersio (licet plene etatis fuerint in Anglia & extra prisonā) necesse apponere clameū suum. So it is proued ẏ if a stranger that hath right vnto ẏ tenemēts, if he were out of ẏ realme at ẏ time of the fine leuied, shal haue no dāmage though that such fine was matter of recorde, by greater reason it seemeth vnto them that a disseisin & discent ẏ is matter in dæde, shal not so græue him that was disseised whē he was out of ẏ realme at ẏ time of the disseisin, & also at the time ẏ the disseisor dyed seised &c. but ẏ he may wel enter notwstanding such discent. Also enquire if a man be disseised, & he arraine an assise against the disseisor, & the recognitors of the assise challēge for the plaintife, & ẏ Iustices of assise wil be aduysed of their iudgements vntill the next assice &c. & in the meane season the disseisour dieth seised &c. if the said sute of the assise shall be taken in lawe for the disseisee a continual claime, in so much that no defaut was in him &c.

¶ Also, enquire yf an Abbot of a monasterye die, & during the time of vacatiō, a mā wrongfully entreth in certaine parcels of land of the monastery, clayming the lande vnto him and his heires, and of that estate dyeth seysed, and the

the land discendeth vnto his heires, and after that an Abbot is chosen, & made Abbot of the monasterie, a questiō is if the Abbot may ēter vpon the heire or not, And it seemeth to some that the Abbot may wel enter in this case, for this ꝑ the couent in time of vacation was no person able to make continual claime, for noe more then they be personable to sue an action, no more be they personable to make continual claime, for the couēt is but a dead body wout head, for in time of vacation a grāt made vnto thē is voide, & in this case an Abbot may not haue a writ of Entre vpon disseisin against ꝑ heire, for this ꝑ he was neuer disseised. And if ꝑ abbot may not ēter in this case, thē he shall be put into his writ of right, the which shalbe to hard for the house, by which it seemeth to them ꝑ the Abbot may wel ēter &c. Quere de dubijs legē bene discere ꝙ dis, querere dat sapere que sunt legitima vere.

¶ Releases.

RElease be in diuers manners, ꝑ is to say release of right ꝑ a man hath in landes or tenements, and release of actions reals & personels and of other thinges. Release of all the right that a man hath in landes or tenements &c. is cōmonly made in such forme, or to such effect. Mouerint vniuersi per presētes me A. de B. remisisse relaxasse, & ōnino de me & heredib' meis quiet' clamasse e. de d. totū ius, titulū & clameū, habui, habeo, vel quoquomodo in futurū habere po-

potero de & in vno meſuagio cū pertinētibus in l. & it is to be vnderſtood, that theſe wordes (remiſiſſe & quietē clamaſſe) be of ſuch effect as theſe words, relaxaſſe &c. & alſo theſe wordes which be cōmonly put in ſuch dedes, of releaſes &c. ꝓ is to be vnderſtood. Que quouiſmodo in futurū habero potero, be as words void in ꝓ lawe, for no right paſſeth by a releaſe, but the right that ꝓ releiſor hath at the time of his releaſe made, for if it be father & ſonne & the father be diſſeiſed, & the ſonne liuinge, his father releaſeth by his dede to the diſſeiſor al ꝓ right that he hath or may haue in the ſame tenemēts without clauſe of warrātiſe &c. & after the father dieth, the ſonne may lawfully enter vpon ꝓ poſſeſſiō of the diſſeiſor, for this that he had no right in the land liuing his father, but the right diſcēded vnto him by diſcent after ꝓ releaſe made by the death of his father. Alſo in a releaſe of al the right that a mā hath in certaine lands, it behoueth vnto him to whō the releaſe is made in ſuch caſe that he hath a freē hold in the lands in dede or in the lawe at the time of ꝓ releaſe made, for in euery caſe where he to whom the releaſe is made, hath a freē holde in dede or in law at the time of the releaſe made &c. the releaſe is good. Frankētenāt in law is, as if a man haue diſſeiſed another, & thereof dyeth ſeiſed, by the which the tenemēts diſcend vnto his ſonne, howbeit that his ſonne enter not in the tenements, yet he hath a frankētenement in the law, which by force of

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the diſcent is caſt vpon him, & therefore the re
leaſe made is good ynoughe. And if he take a
wife ſo being ſeiſed in the law, howbeit that
he neuer enter in deede, & dieth, his wife ſhall
haue thereof her dower: And in ſuch caſe of re
leas of al his right, howbeit that he to whō ỳ
releaſe is made, ne hath any thing in the frāk-
tenemēt nether in dede nor in law, yet the re-
leaſe is good ynough, as if ỳ diſſeiſor haue left
lād ỳ he had by diſſeiſin to another for term of
his life, ſauing the reuerſiō to him, if the diſſei-
ſy or his heirs releſe vnto ỳ diſſeiſor al ỳ right
&c. that releas is good, for that that he to whō
the releas is made, had in him a reuerſion at ỳ
time of the releaſe made. In ỳ ſame maner if
a leaſe be made to a mā for terme of life, the re
mainder vnto another for terme of life, the re-
mainder vnto the third in taile, the remainder
vnto the fowerth in fee, if a ſtrāger that hath
the right vnto ỳ lande releas al his right vnto
any of thē in ỳ remainder, ſuch releas is good,
for this that euery of thē hath a remaīder veſ
ted in him ſelfe, yet if the tenaunt for terme of
life be diſſeiſed, & after he that hath right (the
poſſeſſiō being in the diſſeiſor) releas vnto on
of thē to whom the remainder was made, all
his right &c, That releas is voide, for that,
ỳ he ne had in him no remainder in deede, but
all onely a right of a remainder at the time of
the releaſe made. And note, that euery releaſe
made to him that hath a reuerſion or remain-
der in dede, ſhal ſerue & helpe them that haue

the

the franktenement as well as them to whom the releſe is made, if the tenāt haue ẏ releaſe in his hande ꝛc. In the ſame manner a releſe made to a tenant for terme of liſe, or to a tenāt in the taile ſhall enure vnto them in the reuerſion or to them in the remainder, as well as to the tenāt of ẏ franktenement, and ſhall haue a great aduātage of that, if that they may ſhewe it. And if there be lord & tenāt & the tenant is diſſeiſed, & the diſſeiſy releaſeth vnto the diſſeiſor al the right that he hath in the ſegniory, or in the land, the releaſe is good, & the ſegniorye is extinct. And if the goods of the diſſeiſye be taken, & of them the diſſeiſy ſueth a Repiegiare againſt the lord, he ſhall compel the lorde to auow vnto him, & if he wil auow vpō the diſſeiſour, then vpō the matter ſhewed, ẏ auowrie ſhalbe abated, for the diſſeiſye is tenant to them in right & in law.

¶ Alſo if lande be geuen to a man in ẏ taile reſeruing vnto the donour, & his heires a certeine rent, if the donee be diſſeiſed, & after the donour releaſeth to the donee al the right that he hath in the lād, and after the donee entreth into the land vppon the diſſeiſour in this caſe the rēt is gone, for this that the diſſeiſye at the tyme of the releaſe made was tenant in right, and in lawe vnto the donour, and the auowerie of fine force ought to bee made vppon him by the donour for the rent behinde ꝛc.

But yet noting of the right of the land, ẏ is to ſay, of the reuerſion, ſhall paſſe by ſuche releaſe

leaſe, for this that the donee to whom the releaſe was made then had nothing in the land but onely a right, & ſo the right of the lād may not paſſe by ſuche releaſe of the donee. In the ſame manner it is if a leaſe be made to one for terme of life, reſeruinge to the leſſour & to his heires certain rent, if the leſſee be diſſeiſed, and after the leſſour releaſeth to the leſſee and to his heires, & after the leſſee entreth, howbeit that in the caſe the rent is extinct, yet nothing of the right paſſeth &c. Cauſa qua ſupra. But if it be very lord and very tenaunt, and the tenant maketh a feoffement in fee, the which feoffee neuer became tenant to the lord &c. if the Lord releaſe to the feoffour all his right &c.

Lorde releaſe to the feoffour all his right &c. that releaſe is voide, for this that the feoffour hath no right in the land, and he is no tenant in right to the lord but only tenant as for the auoury to be made, & he ſhall neuer cōpel the lord to auowe vppon him, for the lord maye auowe vppon the feoffee if hee will. Otherwiſe it is where the very tenaunt is diſſeiſed as in caſe afore ſaid, for if the very tenant that is diſſeiſed holdeth of the lord by knights ſeruice & dyeth, his heires being within age, the lord ſhal haue & ſeiſe the warde of the heire, And ſo ye ſhall not haue the ward of the feoffour that made the feoffement in fee, and ſo it is a great diuerſity betweene theſe two eaſes.

¶ Alſo if a man enfeoffe an other in his lande vppon truſt, and to the intent that hee

ſhall

ſhall perfourme his laſt will, and the feoffour occupyeth the ſame at the will of his feoffees, and after the feoffees releaſe by their deede vnto the feoffour all the right &c. This hath ben in queſtion if ſuch releaſe bee good or not, and ſome haue ſaid that ſuch releaſe is good, for this that no priuitie was betwene the feoffees and their feoffour, in ſo much that no leaſe was made after ſuch feoffement by the feoffees to their feoffour to holde at their will &c. and ſome haue ſaid the contrary, & ỳ for two cauſes. One is that when ſuch feoffemẽts are made vpon confidence, to perfourme ỳ will of the feoffour that it ſhalbe vnderſtood by the law ỳ the feoffour by & by ought to occupy the lande at the will of his feoffees, & ſo it is ſuch maner of priuity betwene thẽ, as if a man make a feoffemẽt to another perſon, & they incõtinẽt vpõ the feoffement will ſay and graunt that the feoffor ſhall occupy the lande at their will &c. An other cauſe they alledge, that if ſuch lande bee worth xl. s. by yeare &c. Then ſuch a feoffour ſhalbee ſworne in aſſiſes & in other inqueſtes, in plees reals and alſo in plees perſonels, of what great ſummes ſoeuer that the plenitifes will declare &c. And this is by the cõmon law of the land. Ergo this is for a great cauſe. and the cauſe is that the lawe will that ſuch feoffours and their heires ought to occuppe &c. And to take thereof the rent & al the profits. and all manner of yſſues and reuenues &c. as though the tenements where their owne

without interruption of feoffees, notwithſtanding ſuch feoffements. Ergo the ſame law geueth a priuity betweene ſuch feoffours, and their feoffees vpon confidence &c. For which cauſes they haue ſayd that the releaſe made by ſuch feoffees vpon confidence to the feoffour, or to his heires &c. ſo occupying the land &c. ſhall be good ynough &c. And this is the better opinion as it ſemeth. Alſo releaſes after ỹ matter in deed ſome time haue their effect by force to enlarge the eſtate of them, in whom the releaſe is made, as if I let certayne lande to a man for terme of yeeres, by force whereof hee is poſſeſſed, and I releaſe vnto him al the right that I haue in the land without more wordes ſerued put in the deede and deliuer vnto him the deede. Then hee hath eſtate but for terme of hys life and the cauſe is for this, that when the reuerſion or the remainder is in a man the law will enlarge by his releaſe the eſtate of the tenant &c. hee ſhall haue no greater eſtate, but in the maner and fourme, as if ſuch a leſſour had ſeyſed in fee, and will by his deede make eſtate to one in a certayne fourme &c. & deliuer him ſeyſin by force, of the ſame deede if in the deede of feoffement there be no worde of inheritance &c. Then hee hath eſtate but for terme of life &c. and ſo it is in ſuch releaſe made by him in the reuerſion, or in the remainder, for yf I let lande to a manne for terme of life, and after I releaſe vnto him all my right without more ſayinge in the releaſe

laſe, his eſtate is not enlarged. But if I re-
leaſe vnto him and to his heires of his body en
gendred, then he hath fee taile, and if I releaſe
vnto him and to his heirs, thē if he hath fee ſim
ple. So it behoueth in ſuch caſe to ſpecify in ꝑ
dede, what eſtate he to whom the releaſe is
made ſhall haue &c. And ſometime releaſe ſhal
ſure to let and put ꝑ right of him that maketh
the releaſe to him, to whō the releaſe is made,
as a man is diſſeiſed and he releaſeth vnto the
diſſeiſor al the right that he hath. In this caſe
the diſſeiſor hath his right, ſo that where his
eſtate before was wrong, nowe by the releaſe
it is lawfull and right, but note well ꝑ when a
man is ſeiſed in fee ſimple of any landes or te-
nemēts, and another wil releaſe vnto him al ꝑ
right that he hath in the ſame tenements, it ne
ed not to ſpeake of the heires of him to whō
the releaſe is made for this that he had fee ſim-
ple at the time of the releaſe made: for yf the
releaſe were made to him and to hys heyres
in one day or for one howre, thys ſhall be as
good vnto hym in the lawe, as he had re-
ceiued to him and to hys heyres, for when his
right was gone from him at one time by hys
releaſe without any condition &c. to hym that
had fee ſimple, it is gone for euer. But where
a man hath a reuerſion, or a remainder in fee
ſimple at the tyme of the releaſe made, there
if hee wyll releaſe to the tenaunt for terme
of yeres or for terme of lyfe, or in the
taile, it behoueth to determyne the eſtate

that he to whō the releaſe is made ſhall haue by force of ꝑ ſame releaſe. For this that the releaſe goeth to enlarge the eſtate &c. of him to whō the releaſe is made. But otherwiſe it is where a man hath but a right vnto the land hath nothing in ꝑ reuerſion nor in the remainder in deede. For if ſuch a man releaſe all his ryght to one ꝑ is tenant of the franktenement all his right is gone, though that no mencion made of his heires of him to whō the releaſe is made. For if I let land to a man for terme of lyfe, if I after releaſe vnto him for to enlarge hys eſtate, either it behoueth that I releaſe it to him & to his heyres of his body engendred, or to him & to his heirs males of his body begotten or by ſuch ſemblable eſtate &c. or otherwiſe he hath no greater eſtate thē he had before. But if my tenant for terme of life let the ſame land out to another for terme of the life of the leſſee, the remainder to another in fee, now if I releaſe vnto him vnto whom my tenant letted for terme of life, I ſhall bee barred for euer, though that no mencion be made of his heires for this that at the time of the releaſe made, I had no reuerſion but onely a right to haue the reuerſion. For by ſuch a leaſe with a remainder ouer that my tenant made, in this caſe the reuerſion is diſcontinued & ſuch a releaſe ſhall enure vnto him in the remainder to haue auantage of thys, as well as to the tenaunt for terme of life, for to that intent the tenant for terme of life & hee in the remaynder be as one

tenant

nt in the law and be as if one tenant were
ſeiſed in his demeane as of fee at the time
ſuch releaſe made vnto him. Alſo if a man
diſſeiſed by two, if he releaſe vnto one of
he ſhal hold his felowe out of the land and
ſuch releaſe ſhall haue ſole poſſeſſyon, and
in the land. But if one diſſeyſor enfeoffe
in fee, and the diſſeiſi releaſe to one of the,
ſhall enter to both the ſayd feffes. And the
of the diuerſity betweene theſe two ca-
repugnant ynough.

Alſo if I be diſſeiſed, and ỹ diſſeiſor is dis-
if I releaſe to the diſſeiſor of my dyſſey-
I ſhall neuer haue aſſiſe nor enter vppon
dyſſeyſor, for thys that hys diſſeyſor hath
ryght by my releaſe &c. and ſo it ſeemeth in
caſe, that if there were twenty diſſeyſors
after other, & I releaſe to the laſt dyſſey-
he ſhal barre all the other of their actions,
their title, and the cauſe is as it ſeemeth,
this that in many caſes when a man hath
full title to enter, though he enter not &c.
ſhall defeate all meane titles by hys releaſe.
But this is not in euery caſe as ſhall bee
afterward.

Alſo if a man be diſſeyſed the which hath a
thin age, & dieth and beeing ỹ ſon within
the diſſeiſor dieth ſeiſed, and ỹ lande diſcen-
to the heyre, and a ſtraunger abateth and
the ſonne of the diſſeiſee when he cõmeth
full age releaſeth all hys ryght &c. to the
tenant. In this caſe the heyre of the diſſey-

ſour ſhal haue no aſſiſe of moꝛtdãceſter againſt
the abatour, but he ſhall be barred of the aſſiſe,
foꝛ this ꝓ the abatour hath the right of ꝓ ſon
of the diſſeiſee by his releaſe, and ꝓ entre of the
ſon was lawful ꝛc. foꝛ this ꝓ hee was within
age at the time of ꝓ diſcent. ꝛc. But if a man
be diſſeiſed, and ꝓ diſſeiſour maketh a feoffement
vpon a cõdition, ꝓ is to ſay, to yæde vnto hym
certain rent, and foꝛ default of paiñt a reentre
ꝛc, if the vpſeiſe releaſe to the feffee vpon con-
dition, yet this amendeth not the eſtate of the
feoffee vpon condition, foꝛ notwithſtanding
ſuch releaſe, yet his eſtate is vpon condition
as it was befoꝛe. In the ſame manner it is
where a man is diſſeyſed of certayne land, and
the vpſeiſour graunteth a rent charge out of
the ſame lande, though that after the diſſeiſee
releaſeth vnto the diſſeiſour, and ſo foꝛth, yet
the rent charge abydeth in hys foꝛce. And the
cauſe is in theſe two caſes, that a manne ſhall
haue none aduauntage by ſuch releaſe that
ſhall be agaynſt hys owne ꝓyoꝛ acceptance,
and againſt hys owne grant. And though that
ſome haue ſayd that where the entre of a man
is congeable vppon a tenaunt, yf he releaſe to
the ſame tenaunt that thys auaileth vnto the
tenaunt ſo as if he had entred vpon the tenaunt
and after enfeoffed him ꝛc. this is not true in
euery caſe, foꝛ in the firſt caſe of theſe two caſes
yf the vpſeyſie in fee enter vppon the feoffee
vpon condition, and after enfeoffeth him, then
the condition is all put aſyde and voyde. And
in the ſecond caſe if the diſſeiſee enter and en-
feoffe hym that graunted the rent charge, then

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ꝑ rēt charge auoided. But it is not auoided by any ſuch releaſe wᵗ an enter made &c. Alſo if a man be diſſeiſed by a child wᵗin age ꝑ which entreth in fee, and the alienee dieth ſeyſed and his heire entreth (being ꝑ diſſeiſor wᵗin age.) Now it is in the electiō of ꝑ diſſeiſor to haue a writ of Diſſeiſin intra ætatē, or a writ of ryght againſt ꝑ heire of the alienee, and which writ ſoeuer he taketh of thē he ought to recouer by the lawe. And alſo he may enter into the lāde wᵗout any recouery, and in this caſe the ētre of ꝑ diſſeiſee is takē away, but in this caſe if ꝑ diſſeiſe releaſe his right to ꝑ heire of the alienee & after the diſſeiſour bringeth a writ of ryght againſt the heire of the alienee, and he ioyneth the miſe vpon the cleare right &c. the graund miſe ought by the lawe to ſind that the tenant hath moze cleare right &c. then hath the diſſeiſour, for this that the tenaunt hath the ryght of the diſſeiſeeād his releaſe, which is moze auncient and moze cleare right thē the right of the diſſeiſour, for by ſuch releaſe al the right of the diſſeiſee paſſeth vnto the rent, & is in the tenāt. And to his ſōne haue ſaid, ꝑ in ſuch caſe where a man hath right to lands or tenemēts (but hys entre is not lawfull) if he releaſe vnto the tenāt, &c. Then ſuch releaſe ſhall enure by way of extinguiſhment. And vnto this it may be ſaide, ꝑ this is trueth vnto him that releaſeth, for by his releaſe he hath diſmiſſed himſelfe cleane of his ryght as to his ꝑſon, But yet the ryght ꝑ he had may wel paſſe & go vnto ꝑ tenāt by hys

release, for it should be inconuenient ẏ such an auncient right should be extinct all vtterly &c. for it is commōly said ẏ right may not die. But a release ẏ goeth by ẏ way of extinguishment against al ꝑsons, is where he to whō ẏ release is made, may not haue this ẏ vnto him is released. As if there be lord and tenāt and ẏ lord releaseth vnto the tenant al the right ẏ hee hath in the lordship, or all the right ẏ hee hath in ẏ land &c. such a release goeth by way of extinguishment against all persons, for this that the tenant may not haue the same of him self. In ẏ same maner is a release made to the tenāt of the lād of a rent charge, or not a cōmon pasture, for this ẏ the tenant may not haue ẏ that vnto him is released &c. So such releases go away by extingushment against all persons.

¶ Also to proue ẏ the graund assise ought to passe for the demaundant in the case aforesayd, I haue hard often in the lecture vpon the statute of westm̄ the seconde that beginneth. In casu quando vir amiserit per defaltam in tenemētum quod fuit ius vxoris suæ &c. that at ẏ common lawe before that statute, if a lease were made to a tenant for terme of life, the remainder ouer in fee, and a strāger by a fayned action recouer against ẏ tenant for terme of life by default, and after the tenant dyeth, he in the remainder had no remedy before the statute, for this that he the no possession of ẏ land, but if he in ẏ remainder had entred vpon ẏ tenant for terme of life, and dysseised him, and after the

tenant

tenant entreth vpon him, and after the tenaunt for terme of life leeseth by such recouery had by default, and dieth now he in the remainder may well haue a writ of right against him ẏ recouered for this that the mise shalbe ioined only vpon the clere right, and yet in this case the seism of him in ẏ remainder was defeated by the entre of ẏ tenant for terme of lyfe. But peraũture some wil argue, and say, ẏ he shal haue no writ of ryght in this case for this ẏ when the mise is ioined in such maner, that is to say, if the tenant haue more clere right to ẏ land in the maner as it is holden, then the demaũdant hath in the maner as he demaundeth. And for this that the seism of the demaundant was defeated by the entre of the tenaunt, for terme of life, then he hath no right in the maner as he demaundeth. Unto this it may bee sayd that these wordes (Modo & forma prout &c.) in many cases be wordes of ẏ manner of pleadine, and no wordes of substance. For if a man bring a writ of entre. (In casu prouiso) of alienation made by ẏ tenant in dower to his disenheritãce, & pledeth of the alienatiou made in fee, and the tenant saith that hee aliened not in the maner as the demaundant hath declared & vpon this they be at issue, and it is founde by verdit ẏ the tenaunt aliened in the taile, or for terme of anothers life, the demaũdant shall recouer, & yet the alienation was not in the maner as the demaundant hath declared.

¶ Also if there be Lord and tenant, and the tenant

tenant holdeth of the Lord by fealty only, and the lord diſtraineth ỹ tenãt for rẽt, & the tenant bringeth a writ of treſpas againſt his lord for his cattel ſo take, & the lord pleadeth ỹ the tenãt holdeth of him by fealty & certein rẽt, & for the rẽt behind he came to diſtrain &c. And demaũdeth iudgement of ỹ writ brought againſt him Quare vi & armis &c. And the other ſaith ỹ he holdeth not of him in the maner as he ſuppoſeth, & vpõ this they be now at iſſue, & it is found by verdit that hæ holdeth of him by fealty tantum In his caſe the writ ſhall abate, & yet he held not of the lord in the maner as that lorde had ſaide, for the matter of the iſſue is, whether the tenant holdeth of him or not. For if he hold of him, though the lord diſtraine for other ſeruices that hæ ought not to haue, yet ſuch a writ of treſpas Quare vi & armis &c. lieth not againſt the lord but ſhal abate.

¶ Alſo, in a writ of treſpas of beating or of goods taken, if the defendaunt plede not culpable in the maner as the plaintife ſuppoſeth, & it is founde that the defendaunt is culpable in an other towne, or at an other day then the plaintife ſuppoſed, yet he ſhall recouer. And in many mo other caſes theſe wordes, that is to ſay, in the maner as the demaundant or the plaintife hath ſuppoſed, hee no matter of ſubſtance of the iſſue, for in a writ of ryght where the miſe is ioined vpon the clere ryght, it is as much to ſay and to ſuche effect, that is to wite, whether hath the more ryght, the tenaunt or

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the demaundant to ꝑ thing ſo demaunded ꝛc.
¶ Alſo, if a man be diſſeyſed and the diſſeiſor dyeth ſeyſed ꝛc. and hys ſonne entreth by diſcent, and the diſſeiſee entreth vppon the heire of the diſſeyſour, the which entre is a diſſeiſin ꝛc. if the heire bring an aſſiſe or a writ of right againſt the diſſeiſee, he ſhalbe barred. For this that when the graunde aſſiſe is ſworne, theyr othe is vpon the clere right, and not vpon the poſſeſſion ꝛc. for if the heyre of the diſſeiſor had nought an aſſiſe of nouel diſſeiſin, or a writ of entre in nature of aſſiſe, and recouered againſt the diſſeiſee, and ſued executiō, yet may ꝑ diſſeiſee haue a writ of entre in ꝑ Per againſt hym of the diſſeiſin made vnto him by his father, or he may haue againſt the heire a writ of ryght, But if the heire ought to recouer againſt the diſſeiſee in the caſe aforeſaid by a writ of ryght then all hys right ſhall be clerely gone, for this that a final iudgement ſhould be giuen againſt hym, which ſhould be againſt reaſon wher the diſſeiſee hath more clere right ꝛc. And knowe ye my ſonne, that in a writ of right after thys that the foure knyghts be choſen in ꝑ graund aſſiſe, thē ther is no greater delay thē in a writ of Formedon, after this that the parties be at an iſſue ꝛc. and if the miſe be ioyned vpon batayle, then there is leſſe delay.
¶ Alſo a releaſe of all ꝑ right ꝛc. in ſome caſe is good made vnto him that is ſuppoſed tenaunt in the Lawe though he haue nothing in the tenements, as in a Præcipe quod reddat

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if the tenant alien the lande hanging the writ and after the demaundant releaſeth to him all his right, that releaſe is good, for this that he is ſuppoſed to be tenant by the ſute of the demaundant, and yet he hath nothing in ỹ lande at the time of the releaſe made. In the ſame manner it is if in a Precipe quod reddat, the tenant vouche, and the vouchee enter into the garraunty, if after the demaundant releaſe to ỹ vouchee all his right &c, this is good enough for this that the vouchee after this ỹ hee hath entred in the garrantie is tenant in law to the demaundant.

¶ Alſo as to releaſes of actions reals & actions perſonels, it is ſo that ſome actions be mixt in the realty and in the perſonalty, as if an action of waſte be ſued againſt the tenaunt for terme of life, this action is in the realty for this that the place waſted ſhal be recouered. And alſo it is in the perſonalty for this that the treble dammage ſhall be recouered for the wrong and waſt done by the tenaunt, and for this in this action a releas of actions real is a good ple in bar, and ſo is a releas of actions perſonels. In the ſame maner it is in aſſiſe of nouel diſſeiſin, for this that it is mixt in the realty and in the perſonalty. But if ſuch aſſiſe be arained againſt the diſſeyſour the tenant of the diſſeiſor may pleade a releaſe of all actions perſonalles for to barre the aſſiſe but not releaſe of actions reals, for none ſhal plede a releaſe of al actions reals in aſſiſe, but the tenants &c.

¶ Alſo, in ſuch actions that ought to bee

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ſued againſt the tenant of the franktenement, if the tenaunt haue a releas of al actions reals of ỹ demandant made vnto him before ỹ wrỹt purchaſed, & he pleadeth it, thys is a good plee for the demandant to ſay, that he that pleadeth that plee, had nothing in the franktenement at time of ỹ releaſe made for that he had no cauſe to haue action real againſt him.

¶ Alſo in ſuch caſe where a man may enter in lands or tenements, he may haue of this an action real, which is giuen vnto him by ỹ lawe againſt the tenant. As in this caſe the demaundant releaſe to the tenant al maner actions reals, yet this taketh not away the entre of the demaundant, but the demaundant may well enter, notwithſtanding ſuch releaſe, for thys that nothing is releaſed but the action. &c. In the ſame manner it is of thinges perſonels. As yf a manne wrongfully take my good, if I releaſe vnto him all actions perſonels, yet I may by the lawe take my goods out of hys poſſeſſyon.

¶ Alſo if I haue cauſe to haue a wrỹt of Detinue of my goods againſt another though ỹ I releaſe vnto him for all actions pſonels, yet I may take my goods out of his poſſeſſyon, for this that no right of goods is releaſed to him but onely the action &c. Alſo if a man bee diſſeiſed, and the diſſeyſour maketh a feoffement vnto diuers perſons to his vſe, and the dyſſeiſour continually maketh the profites &c. and the diſſeiſy releaſeth vnto him all actions reals

reals, and after he ſueth againſt him a writt of Entre in nature of aſſiſe, becauſe of the fraute, for this that he taketh the profites. Enquire how the diſſeiſour ſhall be holpen by the ſaid releaſe, for if hee wyll plede the releaſe generally, then the demaundant may ſay that hee had nothing in the franktenement at the time of the releaſe made, and if hee plede the releaſe ſpecially, then it behoueth him to knowledge a diſſeiſin, and then may the demandant enter in the land &c. by his coniſance of the diſſeiſin &c. But peraduenture by ſpecial pleading he may be barred of the action that he ſueth &c. though that the demaundant may enter. &c.

¶ Alſo if a man ſue appelle of felony of the death of his auncеſter againſt another, though the appellant releaſe vnto the defendant al maner actions reals and perſonels, this ſhall not helpe the defendant, for this that this appell is not an action real, in ſo much that the appellant ſhall not recouer any realty, nor ſuch appell is no action perſonal. In ſo much that ꝑ wrong was vnto his auncеſter and not vnto him, but if he releaſe to the defendant all maner of actions, then it ſhalbe a good bar in appelle, and ſo a man may ſee that a releaſe of all maner of actions, is better then a releaſe of actions reals and perſonals &c.

¶ Alſo in appele of robbery if the defendant will plede a releaſe of the appellant of all actions perſonels, this ſeemeth no plee, for an action of appele where the appellant ſhal haue

iudge-

iudgement of death &c. is more high then an action perſonal, and it is not properly ſayd an action perſonal, and therefore if the defendant will haue a releaſe of the appellaunte to barre him of the appeale, it behoueth him to haue a releaſe of all manner of appeles, or a releaſe of all maner of actions, as it ſeemeth &c. But in appele of mathim a releaſe of all maner of actions perſonals is a good plee in barre, for this that in ſuch an action hee ſhall recouer but damunages,

¶ Alſo if a man be outlawed in an action perſonal by proces of the original, & bring a writ of errour is he at whoſe ſuit hee was outlawed will plede againſt him a releaſe of actions perſonals, this ſeemeth no plee, for by the ſayd action he ſhall recouer nothing in the perſonaltie, but all onely to reuerſe the outlawry: but a releaſe in a writ of errour ſhalbee a good plee &c.

¶ Alſo if a man recouer det or dammage, and he releaſe to the defendant all manner of actions, yet he may lawfully ſue executiõ by Capias ad ſatisfaciendum, or by Elegit. or by Fieri facias, for execution by ſuch writtes may not be ſayde an action, but if after a yere and a day the pleyntife will ſue a Scire facias to haue execution &c. then it ſeemeth a releaſe of all actions ſhalbee a good plee in barre, but ſome haue thought the contrary, in ſo much that the writ of Scire facias is a writ of execution, and is to haue execution, But in ſo muche that vpon the ſame writ ỹ defendant may plede diuers matters

ters after the iudgement geuen to put him frō
executiō as outlawry and diuers other ꝛc. ther-
fore it may well be ſaid action ꝛc. and I trowe
ꝑ in a Scire fac' out of a fine, a releaſe of all mā-
ner of actions is agood plee in barre but ſwhe-
re a man hath recouered det or dammage and
it is accorded betwene thē ꝑ ꝑ plaintife ſhall be
put out frō action, thē it behoueth ꝑ ꝑ plaintife
make a releaſe to him of al maner actions.

¶ Alſo, if a man releaſe to another al manner
demaūds, this is ꝑ moſt beſt releaſe ꝑ he to
whom ꝑ releaſe is made can haue, and moſt ſhal
enure to his auantage, for by ſuch releas of al
maner of demaūds, al maner of actions reals
perſonels, and actions of appeles, be gone and
extinct, and al maner of executions be gone and
extinct. And if a man hath title to enter in any
landes or tenementes by ſuch releaſe his title is
gone. And if a man haue rent ſeruice or rent
charge or common of paſture ꝛc. by ſuch releaſe
of all maner demaundes to the tenaunt of the
land, whereof the ſeruice or the rentre is go-
ing out, or in what lande ſoeur the common be
the ſeruice and rent, and the common is gone
and extinct ꝛc.

¶ Alſo if a man releaſe to another all manner
quarels, or all cōtrouerſies or debates betwene
them. Enquire to what matter, and to what ef-
fect ſuch wordes extend.

¶ Alſo, if a mā be bound by his deede to an o-
ther in a certain ſumme of mony to pay at ꝑ fe-
aſt of S. Michael thē next folowing ꝛc. if ꝑ ob-

lige

lege before the ſaid feaſt releaſe to the obligour all actions he ſhalbe barred of the duety for euer, & yet he might haue no action at the time of the releaſe made. But if a man let lande to another for terme of yeres, to yeld at the feaſt of ſaint Michael next enſuing xl. ſhillinges & before the ſame feaſt hee releaſeth to the leſſee all actions, yet after the ſame feaſt he ſhall haue an action of Det for the non paiment of the xl. s. not withſtanding the ſaid releaſe. Studye the cauſe of the diuerſitie betweene theſe two caſes.

¶ Alſo, where a man wil ſue a writ of right it behoueth that he plede of diſſeiſin of himſelf or of his auncеſters, & alſo that the ſeiſin was in time of the ſame king as he pledeth in his plee for this is an auncient law vſed as it appeareth by report of a certein plee, in ſuch forme as enſueth. Sir I Barrey brought a writ of right againſt Raynold Aſhlington, & demanded certeine tenemēts &c. the miſe was ioined in the bank, & the original, & the proceſſe were ſent before Juſtices errāts, where the parties came & the xij. knights were, ſworne without challenge of the parties to be alowed, for this that the electiō was made by aſſent of the parties with the iiij. knights, and the othe was ſuch, that I ſhall ſay trouth &c. whether R. of I. haue more right to holde the tenementes that John Barrey demanded againſt hun by hys writ of right, or John to haue the tenements as hee demaundeth, and for nothing to

let to ſay the trouthe as god me helpe &c. Without ſayng to their knowledg, & ſuch othe ſhalbee made in attaint, & in battaile, & in Waginge of law for thoſe do euery thing vnto an end. But I Barrey pleded of ꝑ diſſeiſin of on Rafe his aūceſter in time of king Hēry, & Rainold vpō the miſe ioined tendered halfe a marke for the time &c. & vpō this Herle Juſtice ſaid to the grūd aſſiſe, after that they were charged vpon the clere right goodmen, Raynold gaue half a marke to the king for that tim to the intent that if ye find that the aūceſter of John was not ſeiſed in time that the demādant hath pleded you ſhal enquire no further vpon the right & for this ye ſhal ſay to vs whether the aunceſter of John Ralfe by nam was ſeiſed in ꝑ time of king Henry as he hath pleded or not, & if ye find that he was not ſeiſed in the time, ye ſhal enquire no more, & if ye finde that he was ſeiſed, then enquire farther of the right, & after the graūd aſſiſe came wt their verdit, & ſaid ꝑ Raiſe was not ſeiſed in the time of king Henry, wherby it was awarded ꝑ Rainold ſhould hold the tenements againſt him demaunded to him & to his heires quite of I Barrey & his heires, to the remenant, & John in the mercy.

¶ Conūrmation.

A Deede of Cōūrmation is moſt commonly in ſuch form or to ſuch effect. Nouerint vniuerſi &c. me A. de B. ratificaſſe, approbaſſe, & cō firmaſſe C. de D. ſtatū & poſſeſſionē quos habeo de re

de te in vno mesuagio &c. cũ pertiũ in N. & in som̃ case a dede of cõfirmatiõ is good & vailable, where in the sam̃ case a deede of release is not good nor vailable. As I let lãd to a mã for t̃me of his life. the which letecht the same land to a nother for xl. yeres, by force of the which he is possessed, if I by my deede confirme the state of the tenant for terme of yeres & the tenant for terme of life dieth during the terme of yeres, I may not entre in the land during the same t̃me yet if I by my deede of release haue released to the tenant for terme of yeres in the life of the tenant for terme of life, the release shalbe void, for this that then no priuity was betwene me & the tenant for terme of yeres, for a release is not auaylable to the tenant for terme of yeres but where a priuity is betwene him, & him ẏ releaseth. In the sam̃ maner it is if I be dessei=sed, & the disseisor maketh a release to an other for t̃me of yeres, if I release vnto the termor ẏ is void, but if I confirme ẏ estate of the termor that a good & effectual. Also if I be disseised & I confirme the state of the disseisour then hee hath a good and rightfull estate in fee simple though that in ẏ deede of confirmation, no mẽ=cion is made of his heires for this that he had fee simple at ẏ time of the confirmation, for in such case if the disseisy confirm̃ the estate of the disseisor, to haue & to hold to him for terme of his life, yet ẏ disseisor hath fee simple & is seised in his demesne as of fee, for this ẏ when his e=state was confirmed he had fee simple & in such deede he may not change his estate wout entre

vpō him &c. in the same maner it is if the estate be cōfirmed for terme of a day or for terme of an hower, he hath a good estate in fee simple for ꝑ that his estate in fee simple was once confirmed for, Cōfirmare idē est quod firmum facere. Also if two be disseisors & the disseisie releaseth to the one he shal hold his felow out of the lād but if the disseisy cōfirme the estate of the one without more speech in ꝑ deede, som say ꝑ he shal not hold his fellow out but be shal hold iointly wᵗ him, for this ꝑ nothing was cōfirmed but this estate that was ioint, & for this same haue said that if ꝫ iointenants be, & the one confirmeth the estate of the other, ꝑ he hath but a ioint estate as he had before, but if he haue such wordes in ꝑ deede of confirmation to haue & to hold to him & to his heires al the tenemēts whereof mētion is made in the confirmation thē he hath estate sole in the tenements, & therefore it is a good & a sure thīg in euery cōfirmation to haue these wordes, to haue & to hold the tenemētes & in fee or in fee taile or for terme of life, or for terme of yeres after as the cause or the matter is, for to the entent of some, if a man let land to another for terme of life, & after hꝫ confirmeth his estate by these wordes to haue & to hold his estate to him & to his heires, this confirmation as concerning his heires, is void, for his heires cannot haue his estate which was but for terme of lyfe, but if he confirme his estate by these wordes to haue the same land to him & to his heires this confirmation maketh fe simple in this case to him in the lande for

this

this ẏ these words to haue & to hold &c. goeth in ẏ land & not to ẏ estate ẏ hee hath &c. Also if I. let certein lād to a womā sole for term̄ of her life, the which taketh a husband, & after I cōfirme the estate to the husband & to the wife for terme of their two liues, in this case the husband holdeth not iointly w̄ ẏ wife but holdeth in ẏ right of his wife for terme of his life, but this cōfirmatiō shall ēure to ẏ husband by waye of remaynder for terme of hys life, if hee suruiue his wife, but if I let land ta woman sole for t̄me of yeres, which taketh a husbād & after I cōfirme the state to the husband & ẏ wife, for terme of bath their liues, in this case they haue ioint estate in the franktenem̄t of the land, for this, ẏ the wife had no franktenemēt before. Also, if a person of a church charge the glebe of his church by his deede, & the patron & ẏ ordinarie cōfirme the same grāte, & all that is cōprised w̄in ẏ same grāt, thē ẏ same graūt shalbe in his strēgth after ẏ purpose of the sāe grāt, but in such case it behoueth ẏ the patron haue fee simple in the auowson, for if hee haue estate in the auowson for terme of life, or in taile, then the graunt shal stād but during his life, & the lyfe of the person that graūted it &c. Also, if a man let land for terme of life, which tenant for terme of life chargeth the land with a rent in fee, & he in the reuersiō cōfirmeth the same graunt, this charge is good ynough & effectual, also if there be a ꝑpetual chātry where of the ordinary hath nothing to meddle nor to do, the patron of the chauntry, and the chap=

laine of ẏ same ẽhauntry may charge the chañ-trie with a rent charge in perpetuitie. Also in some case these verbes, dedi & cõcessi, haue the same effect in substance, & shall enure to ẏ same entent as this verbe confirmaui, as if I be desseised of a plough land, & after I make such a deede &c. Sciant presentes &c quod dedi to the disseisour the said plough lande &c. And if I deliuer al onely the deede to him wout liuerye of seisin of the land, ẏ is a good confirmation, & as strong in the lawe, as it he had in the deede this verbe confirmaui &c.

Also I let land to a man for terme of yeres, by force of which he is possessed, and after I make him a deede &c. Quod dedi vel concessi &c, the same land to haue for terme of his life, & deliuer him his deede, then by and by hee hath estate in the land for terme of his lyfe, and if I saye in the deede to haue to him and to his heires of his body engendred, hee hath estate in the taile, and if I saye in the deede to haue and to hold to him & to his heires, he hath estate in fee simple, for this shall enure to hym by force of confirmation to enlarge his estate. Also if a man bee disseysed, and the disseysour dyeth seised, and his heires bee in by dyscent. after the disseisy, & the heire of the disseisour make ioyntlye a deede to another in fee, and lyuerye of seysin vpon thys is made as to the heire of the disseisour that ensealeth the deede the tenements passe by the same deede by waye of feoffement, and as to the disseysye that ensealeth the same deede, thys shall not

enure

enure by ꝯ way of confirmation, but if the disseisie in this case bringe a writ of Entre in the (Per & Cui) against the alien of the heire of the disseisor, enquire howe hee shal pleade ꝯ deede against the defendant by way of confirmation &c. And know ye this my childe, ꝯ it is ons of the most honorable, lawdable, and profitable things in our law, to haue the science of wel pleading, in actions reals and personals, & for this I counsaile thee, specially to set thy courage & cure to learn ꝯ. Also, if there be lorde & tenant, & the lord cōfirmeth the estate ꝯ the tenant hath in the tenements, yet the seignior ye wholy abydeth to the lord as it was beefore. In the same maner it is, if a man haue a rent charge out of certeyne land, & he confirme the state ꝯ the tenant hath in the land, yet abideth to the confirmour the rent charge. In the same maner it is if a man haue common of pasture in the land of any other, if he confirme the state of the tenant of the land, nothinge shall depart from him of his common, but this notwithstanding the common abydeth to him as it was beefore.

¶ But if there be lorde & tenant which holdeth of his lord by seruice of fealty & xx. s. of rent, if the lord by his deede confirme ꝯ estate of the tenant to hold by xij. ß. or by an ob, in this case the tenaunt is discharged of all other seruices, and shall yelde nothinge to the lorde but that ꝯ is compriſed within the same confirmation, yet if the lord will by the deede of confirmation, that the tenaunt in this case

ought to yeld to him an hawk or a rose yerely at such a feast &c. this reseruation is voide, for this that he reserueth to him a newe thinge ꝑ neuer was parcel of the seruices before ꝑ confirmatiõ, & so the lord may abridge the seruyces by such confirmation, but he may not reserue to him a new seruice &c.

¶ Also, if there be lord meine & tenãt, & ꝑ tenant is an abbot ꝑ holdeth of ꝑ meine by certeine seruices yerly, the which hath no cause to haue acqtãce agaynst his meine for to brig a writ of meine &c. In this case if ꝑ meine cõfirme the state ꝑ the abbot hath in the land to haue & to hold the land vnto him and his successors in frankalmoign or free almes &c. In this case this confirmation is good, & then the abbot holdeth of the meine in frankalmoign, & ꝑ cause is for this, ꝑ no new seruice is reserued, for al ꝑ seruices specially specified, bee extinct & nothing is reserued to the meine but ꝑ abbot shall hold ꝑ lãd of him as it was before the confirmation, for he that holdeth in frankalmoign ought to do no bodely seruice so that by such cõfirmation it appeareth that ꝑ meine shall not reserue vnto hi no newe seruice, but that ꝑ lãds shalbe holden of hi as it was before, & in this case the abbot shall haue a writ of meine if he be distrayned in hys default by force of the said confirmation where perad he might not haue such a writ before &c.

¶ Also, if I be seised of a villain, as of a villeine in grosse, & an other taketh hi out of my possession claimig hi to be his villain, whereas he

he hath no right to haue hī as his villain, & after I cōfirme ꝑ estate to him ꝑ he hath in my villain, this cōfirmation semeth void, for this ꝑ none may haue possessiō of a mā as of a villain in grosse, but he which hath right to haue him as his villain in grosse, & in so much ꝑ he to whō ꝑ cōfirmaē was made, was not leyed of him as of his villain at the time of the confirmatiō, such cōfirmation is void, but in this case if such wordes were in the dede. Sciatis me dedisse & confirmasse tali &c. talē villanū meū, this is good, but this shall enure by force and way of graunt, & not by way of confirmation &c. Also, sometimes these verbes (dedi & concessi) enure by way of extinguishmēt of ꝑ thing geuen or grāted. As a tenant holdeth of hys lord by certein rēt, & ꝑ lord by his dede granteth to the tenant & to his heires the rent &c. this shall enure to ꝑ tenāt by the way of extinguishmēt, for by this graunt the rēt is extinct. In the same manner it is where one hath a rēt charge of certeine land, & he graūteth to ꝑ tenāt of the land the rent charge, & the cause is for this, ꝑ it appereth by the wordes, of ꝑ grāt that the wil of the donour is, that the tenaunt shal haue the rent &c. in so muche that he maye haue no rent out of his owne lande, for thys dede shalbe vnderstode and taken for the most aduauntage and auaile of the tenaunt that yt may be taken, and for that it is by way of extinguishment. Also, if I let land to a man for terme of yeres, & after I confirme hys estate without mo wordes but in the dede, he hath

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no greater estate but for terme of yeares as he had before, but if I release to him my right ꝑ I haue in the lande without mo wordes put in the deede, he hath estate of franketenement, & so maist thou my childe vnderstand great diuersities betwene releases and confirmations. And if I be within age, & let land to one for terme of xx. yeres, & he graunteth the lande for terme of x. yeres, so ꝑ he granteth but parcel of the time. In this case whē I am at full age yt I release vnto ꝑ grauntee of the lease &c. this release is voide for this, ꝑ there is no priuity betwene him & me. But if I confirme his estate, thē this confirmacion is good, but if my lessee graunt al his estate to another, then my release made to the graunte, is good & effectuall. Also if a man grut a rēt charge out of his lād to an other for terme of his life, & after I confirme his estate in the said rēt, to haue and to hold to him in fee taile or in fee simple, this confirmation is void, as to ꝑ enlarging of his estate for this, that he ꝑ confirmeth had no reuersion in the rent, but if a man seysed in fee of rent seruice or of rent charge, & hee graunteth the rent to another for lyfe, and the tenant attourneth, and after hee confirmeth the estate of the grauntee in fee taile, or in fee simple, this confirmation is good as to enlarge his estate after ꝑ wordes of the deede of confirmation, for this, ꝑ hee that confirmed the estate at the time of the confirmation, hadde the reuersion of the rent &c. But in this case afore-

a for esaid, where a man graũteth a rent charge to another for terme of lyfe, if he wil that the grauntee shall haue estate in the taileor in fee him behoueth that the deede of the grauntee of the rent charge for terme of lyfe, be surrendred or cancelled, & then to make it a new deede of such a rent charge, to haue & to take to ẏ grauntee in the taile or in fee. Ex paucis dictis intendere plurima possis.

¶ Attournement. Cap. x.

ATtournement is if there be lord & tenant & the lord will graũte by his deede the seruice of his tenant to another for terme of yeres, or for terme of life or in taile, or in fee, him behoueth ẏ the tenant attourne to the grauntee in the life of the grauntee by force and vertue of ẏ graunt, or otherwise the graunt is void: and atturnement is none other thinge in effect, but when the tenant hath hard of the graunt made by his lord, that ẏ same tenant by word agree to the said graunt, as to say to the grauntee, I agree me to the grauntee made to you, or I am wel content of the graunt made to you &c. but the more common atturnemẽt is to saye sir I attourne to you by force of of the same graunt, or I become your tenant &c. or to deliuer vnto the grauntee i. d̃. ob. or farthing, by way of attournement &c.

¶ Also if a mã bee seised of a manour which manor is parcell in demesne, & ꝑcel in seruice, if hee

if he will alie̅ such a maner to another, it behoueth that by force of the alienat all the tenāts ꝑ holde of the alienor (as of this maner &c.) atturne to the alienee or otherwise ꝑ seruices abide continually in ꝑ alienor, except tenants at will, for it nedeth not that tenants at will atturne vpon such alienatiō &c. for this that ꝑ same lāds or tenem̃ts ꝑ they holde at will do passe to the alienee by force of suche alienation.

¶ Also, if there bee lorde and tenaunt, & the tenaūt letteth the tenem̃ts to a mā for terme of life, the remainder to another in fee, if ꝑ lord graūt the seruices to the tenaunt for terme of life in fee, in this case the tenāt for term̃ of life hath fee in the seruices, but ꝑ seruices be put in suspēce during his life, but his heires shall haue the seruices after his death, & in that case it needeth not attournement, for by the acceptance of the deede of hym ꝑ ought to attorne, this is attornem̃t in hym selfe &c. but where ꝑ tenaunt hath as great & high estate in the tenem̃ts as the lord hath in ꝑ seigniory, in such case if the lord graunt the seruice vnto the tenant in fee, this enureth by way of extinguishment. Causa patet

¶ Also, if there be lord & tenant, & the tenant maketh a lease to one for terme of life, rendring ꝑ reuerſiō vnto him, if the lord graūt the seigniory to ꝑ tenāt for terme of life in fee, in this case it behoueth ꝑ he in the reuerſiō attorne to the tenāt for term̃ of lyfe by force of ꝑ graūt or otherwise the graūt is void, for this that he in the

he reuersion is tenant to the lord.

¶ Also if there be lord and tenaunt, and the tenaunt holdeth of the Lord by twenty manner of seruices, and the lord graunteth his seigniourie to another, if the tenaunt pay or doe one of the seruices to the grauntee, this is a good attournement of and for the seruices, though that the tenauntes entent was to attorne but of the same parcell, for this that the seigniourie is an whole thing, though ỹ there be diuers manner of seruices that the tenaunt ought to do.

¶ Also if there be Lorde and tenaunt and the tenaunt holdeth of the Lorde by many maner of seruices and the lord grauntech the seruices to another by fine if the grauntee sue a Scire facias out of the same fine, for any parcell of the seruices & hath iudgement to recouer, this iudgement is a good attournement in the law for all the seruices.

¶ Also if the Lord of the rent, grauteth the seruices vnto another, and the tenaunt attourneth by a peny, and after the grauntee distraineth for rent behinde, and the tenaunt to hym maketh the rescours. In this case the grauntee shall haue no assise of the rent but hee shall haue a writ of Rescours for that the gift of the peny was but by way of attornement. But if the tenaunt had giuen vnto the grauntee the said peny as parcel of the rent or an halfe peny, or a farthinge by way of seisin of the rent, then this is a good attournement, and also yt

is

ts a good seisin to the grauntee of the rent, and then vpon such rescous the grauntee shall haue an assise &c.

¶ Also if a man let tenemts for term of yeres by force of which the lesse is seised, & after the lord graunteth by his deede the reuersion to another for terme of life, or in taile, or in fee, it behoueth him in this case ỹ the tenant for term of yeres attorne, or otherwise nothing passeth to such grauntee by such deede, & if in this case the tenant for terme of yeres attorne to ỹ grauntee, then by & by passeth the franketenement to ỹ grauntee by such attornement without any liuery of seisin &c. for this if any liuery shal be made or nedeth to be made in suth case, then ỹ tenant for terme of yeres shalbe at time of ỹ liuery of seisin out of his possission, which should be against reason.

¶ Also if lande be let to a man for terme of yeares, the remainder to another for terme of lyfe reserning to the lessour a certayne rent by yeare, and liuery of seysin is made vpon this to the tenaunt for terme of yeares, if he in the reuersion in such case graunt his reuersion to another &c. and the tenantthat is in the remainder after the terme of yeares attourneth, this is a good attournement, and he to whom the reuersion is graunted, by force of such attournement shal distraine the tenant for terme of yeares for the rent due after such attournement, though the tenant for terme of yeres neuer attourned vnto him, and the cause is for

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that where the reuersion is dependant vpon the state of franktenement, it suffyseth that the tenant of the franktenement attorne vpon such graūd of reuersion &c. & it is to wit that where a lease for terme of peres or for terme of life, or a gift in the taile is made to any man, reseruing to such a lessor of donor certein rent, if such a lessour or donour graūt his reuertion to another, & the tenant of the lāde attorne, the rent passeth to the graūtee, though in the dæde of the graūt of reuersiō, no mention is made of the rent, for this ỳ the rent is incident to the reuersion in such case, & not econuerso. For if a man wil graūt ỳ rent in such case vnto another reserning to him ỳ reuersion of the lād, though the tenant attorne to the graūntee, this shalbe but a rent secke &c.

¶ Also, if a man let land vnto another for terme of life, and after such lease hee confirmeth by a dæde the estate of the tenaunt for terme of lyfe, the remainder to another in fee and the tenaunt for terme of lyfe accepteth the dæde, then is the remainder in dæde to him to whon the remainder was geuen or ymitted in the same dæde, for by the acceptaunce of the tenant for terme of life of the saue dæde, thys is a graunt of him and so an attournement in lawe, but yet hee in the remainder shall haue none action of wast nor other benefite by such remainder, but if that he haue the same dæde in his hand, by which the remainder was graūted vnto him, and for this that in such case

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the tenant for terme of lyfe wil retaine to him the deede, to the entent that he in ỹ remainder shal not haue an action of wast against him, for this that he may not come to haue the possession of the deede &c. It shal bee good in such case for him in the remainder, that a deede indented be made by him that wil make the confirmation, and the remainder ouer &c. And he that maketh such confirmation deliuer a part of the Indenture to the tenãt for terme of life & the other part to him that hath the remainder, and then he by shewinge of the part of the indenture may haue an action of wast against the tenant for terme of life, and also other aduauntage that he in the remaynder may haue in such case.

¶ Also if two iointenauntes bee, whych lette lande to another for terme of life, yeldinge to them and their heires a certayne rent by peare. In this case if one of the two ioynt nauntes en the reuersion release to the other iopntenantes in the same reuersion, thys release is good, and he to whom the release is made, shall haue onely the rent of the tenaunt for terme of lyfe, and shall haue a writ of wast against them though he neuer attourned by force of such release, & the cause is for the priuitie that once was betweene the tenaunt for terme of lyfe and them in the reuersion. In the same maner, and for the same cause is, where a man letteth lande to another for terme of his lyfe, the remaynder to another

for

for terme of his life, reseruing the reuersion to the lessour, in this case if he in the reuersion release to him in the remainder &c. & to his heirs al his right &c. then he in the remainder hath a fee &c. and shall haue a writ of waste against the tenant for terme of life wout any attornement of him &c.

¶ Also if a lease be made for terme of lyfe the remainder vnto another in the taile, & remainder ouer to the right heires of the tenaunt for term of lyfe, in this case yf the tenant for terme of life graūt his remainder in fee to another by his deede, the remainder by & by passeth by his deede wout any other attornement. For if any ought to attorne in this case it should be the tenant for term of life And it were in vaine that he attorne vpon his owne grant &c.

¶ Also, if there be Lord and tenaunt, & the tenaunt holdeth of the Lord by certeyn rent and knightes seruices, it the Lord graunt the seruices of the tenaunt by fine, the seruices be by and by in the grauntee by force of the fine, but yet the Lord may not distraine for any parcel of his seruices without attornement. But if the tenant dye his heire being within age, the lord shal haue the ward of the body of the heire and of the lande &c. howbeit that he neuer attourned. For this that & seigniory was in the graunte maintenant by force of the fine. And also in some case if the tenant dye without heire, the lord shall haue the tenaūcy by way of Eschete. In the same maner it is if a

man graunt ꝑ reuerſion to his tenāt for terme of life to another by fine, the reuerſion, paſſeth preſently to the grantee by force of the fine, but the grauntee ſhall neuer haue action of waſt without attournement &c. But yet if the tenāt for terme of life aliene in fee the grauntee may enter &c. for this that the reuerſion was in him by force of the fine, & ſuch alienation was to his diſenheritance. But in his caſe where ꝑ lorde graunteth the ſeruices of his tenant by fine if the tenaunt dye, his heires being of full age, ꝑ grauntee by the fine ſhall not haue the reliefe, nor neuer ſhall diſtraine for the reliefe, except there had ben ſome attornement of the tenant that dyed &c. for of ſuch thinges that lye in diſtreſſe, vpon the which a writ of Replegyare is ſued &c. a man ought to auow ꝑ taking Good & righteous &c. there ought to be attornement of the tenant, & howbeit that the grant of ſuch ſeruices be by fine. But to haue ward of landes and tenementes ſo holden during the nonage of the heire or them to haue by way of eſcheate, there needeth not any diſtreſſe &c. but an entre in the lande by force of the ryght of the ſeigniourye that the grantee hath by force of the fine.

¶ Alſo in auncient Boroughes or Cities where tenements within the ſame boroughes or Cities beene deuyſable by teſtament by the cuſtome and the vſe &c. if in ſuch boroughe or citie a man bee ſeiſed of rent ſeruice or of rent charge, and he deuyſeth ſuch rent or ſeruice to ano-

another by his testament & dyeth &c. In this
case he to whō the deuise is made may distrain
for the rent or the seruyses behind, howbeit þ
the tenant neuer attourned. In the same ma-
ner it is where a man letteth such tenementes
deuisable to another for terme of life, or for
terme of yeres, & deuised the reuersion by his
testament to another in fee or in fee taile, and
dieth, & anone after þ the tenant maketh wast,
he to whom the diuise was made shall haue a
writ of wast, howbeit that the tenāt neuer at-
tourned, & the cause is for this that the wil of
the deuysor made by the testament, shalbe per-
formed after the intent of the diuisour, & if the
effect of this should lie vpon the attourning of
the tenant &c. Then percase the tenant would
neuer attourne, & then the wil of the deuisour
should neuer be performed, & therfore the deui-
see shall distrayne or haue an action of wast
without attornement. For if a man diuise such
tenementes to another by his testament (ha-
bend' ubi imperpetuum) and dyeth, and the
diuisee entreth, hee hath a fee simple. Causa qua
supra, & yet if a deede of feoffement were made
to him by the deuisour of the same tenements,
(habendum & tenendum sibi perpetuum) yf ly-
uery and seisin were neuer there vpon made,
he shall haue none estate but for terme of
yfe &c.

¶ Also if a man seised of a Manour whych
is parcell in demeane and parcell in seruyces
and there of bee disseysed, but the tenunt

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which holdeth of the manour, neuer attorneth to the disseisour, in this case, howbeit ỳ the disseisor dye &c. & his heire is in by discēt, yet may the disseisy distrain for the rent being behinde. & haue the seruice: but if the tenants come to ỳ disseisour & say we become your tenaunts &c. or otherwise make attournement to him &c. & after the disseisor dyeth seised &c. then ỳ disseisy may not distrain for the rent, for this that al the maner discendeth to the heire of the disseisour. But if one holde of mee by rent seruice which is a seruice in grosse, & another that no right hath, claimeth the rent & receiueth & taketh the same rent of my tenant by coherſion of distresse, or by other forme & so disseiseth mee by taking such rent, howbeit ỳ such a disseisor dye seised by such takinge of the rent, yet after his death I may wel distraine for the same rēt being behinde before the death of the disseisor & after his death, & the cause is this ỳ such is not my disseisour but by election at my will, for howbeit that he toke the rent of the tenant I may at all time distraine my tenant for ỳ rent behynd &c. so it is to me but as if I will suffer the tenaunt to bee by so much tyme behynde of payement to mee of the same rent, for the payement of my tenaunt to another to whom he ought not to pay, is no disseisin to mee, nor shall not put mee out of my rente wythout my will and electyon, for howbeyt that I may haue assise against such a taker &c. yet thys is at my election if I will take hym as

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my diſſeiſour or not, ſo þ ſuch diſcens of rentz in groſſe ne putteth not out the lordes fro their diſtreſſe, but þ at eche time they may well diſtraine for the rent behind, & in this caſe if after the deceaſe of him þ ſo wrongfully toke þ rent I graunt by my dæde the ſeruices to another, & the tenant attorneth, this is good ynough, & the ſeruices by ſuche graunt & attornement, incontinent be in the grauntee &c. But otherwiſe it is where the rent is parcel of the manour, & the diſſeiſour dieth ſeiſed, of the whole manour, as in the caſe beforeſaid.

¶ Diſcontinuance. Cap. xi.

DIſcontinuance is an auncyent worde in the law, and hath diuers ſignifications &c. but as to one entent it hath ſuch a ſignification, that is to ſay, where a man hath aliened to an other certayne landes or tenementes, & dyeth, and another hath right to haue the ſame landes or tenementes, but hee ne maye enter in them, becauſe of ſuche alienation &c. As if an Abbot ſeiſed of certeyne lands and tenements in fee, and hee alieneth the ſame lands and tenements to another in fee or in taile, or for terme of life, and the abbot dieth, his ſucceſſour maye not enter in the ſame landes and tenementes, howbeeit that hee haue ryght to haue them as in the right of the houſe, but hee is put to his action to recouer the ſame landes or tenementes which is called a writ de ingreſſu ſine

assensu capituli.

¶ And if a man seised of land as in the right of his wyfe &c. and therof enfeoffeth an other &c. and dyeth, the wife may not enter, but thee is put vnto her action the which is called Cui in vita.

¶ Also, if tenant in the taile of certeyne land therof enfeoffe another &c. and hath issue and dyeth &c. his issue may not enter in the lande, howbeit that hee hath right and title to that but that he is put to his action, that is called a Formedon in the discender.

¶ Also, if there be tenant in the taile, & the reuersion is to the donour & to his heires, if the tenant make a feoffement &c. and dieth without issue, he in the reuersion may not enter, but is put to his action of Formedon in ỳ reuerter, & in the same maner it is where the tenaunt in the taile of certein land where the remaynder is to another in the taile, or to another in fee, if the tenant in the taile alieneth in fee, or in fee taile &c. & after dyeth without issue, they in the remaynder may not enter, but bee put to their writ of Formedon in the remainder &c. and for this that by force of such feoffemēt & such alienations in the cases aforesayd, & in like cases they which haue title & right after ỳ death of such a feoffor or alienor may not enter, but bee put to their actiōs vt supra. Therfore such feoffments & alienations be called discontinuances.

¶ Also, if a tenant in the taile be disseised, & he releaseth by his deede to the disseisour & to his heires

heires al the right ꝑ he hath in ꝑ same lande, this is no discontinuāce, for this ꝑ nothing of right passeth to the disseisour but for terme of life of ꝑ tenaunt in the taile ꝑ made the release &c. But by the feoffement of tenant in ꝑ taile a fee simple passeth by the same feoffement by force of lyuery of seisin &c. but by force of a release, nothing passeth but the right ꝑ hee may lawfully & rightfully release without hurt or dāmage to other persons which thereto haue right after his decase &c, & so it is a great diuersitie betwene a feoffement of the tenant in the taile, & a release of the tenant in the tayle, But it is sayd, ꝑ if tenant in the tayle in this case release to the disseisour & bindeth & hym & his heires to warrantise &c. and dyeth & this warranty discendeth to his issue, then ꝑ is a discontinuance because of warantise &c. But if a man haue issue a sonne by one wife which dieth & after he taketh another wife, & ꝑ tenements be geuen to him & his second wife, & to ꝑ heires of their two bodies engendred, & they haue issue another sonne then ꝑ second wife dieth, & after ꝑ tenant in the taile is disseised, & he releaseth to his disseisor all his right &c. & bindeth him & his heires vnto warantise, and dieth, this is no discontinuance to the issue in ꝑ tayle by the second wife, but he may wel enter &c. for this that the warrantise discended to his elder brother, that hys father had by hys first wife.

In the same maner where tenemēts be descen-

dable to the yonger ſonne after the cuſtome of borough Engliſh, be entailed &c. & the tenant in the taile hath iſſue two ſonnes & is diſſeiſed, & he releaſeth to his diſſeiſor all hys right & warrantiſe & dieth, ỳ yonger ſonne may enter vpon the diſſeiſor not wſtanding the warrantiſe, for this ỳ the warantiſe deſcendeth to the elder ſonne, for alway the warantiſe deſcendeth &c. to him that is heire by the commō law.

¶ Alſo, if an Abbot be diſſeiſed, and he releaſeth to the diſſeiſour with warantiſe, this is no diſcontinuance to his ſucceſſour, for this ỳ nothing paſſeth by this releaſe but the ryght that he hath during ỳ time that he is Abbot and this warantiſe is expired by his pryuation or by his death.

¶ Alſo, if tenaunt in the taile be ſeiſed of certeyne lande, and hæ letteth the ſame land for terme of yeres, by force of whiche leaſe the leſſee is in poſſeſſion, to which poſſeſſion the tenaunt in the taple by his deede releaſeth al his right that he hath in the ſame lande to the leſſee and to his heires for euer, this is no diſcontinuaunce, but after the deceaſe of the tenaunt in the taile, his iſſue may well enter, for this that by ſuche releaſe nothinge paſſeth but for terme of life of the tenaunt in the taple. In the ſame maner if the tenaunt in the taile confirme ỳ eſtate of the leſſee for terme of certeyne yeres to haue and to holde to him and to his heires, this is no diſcontinuance, for this that nothinge paſſeth any ſuche confirmation, but the

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estate ẏ the tenaunt in the taile hath for terme of his life.

¶ Also, if a tenant in ẏ taile by his dede grāt to another all his estate ẏ he hath in the tenements entailed to him, to haue & to hold al his estate to the other & to his heires for euer, & deuereth seiūn accordinge. In this case the tenant to whom the alienation was made, hath none other estate but for terme of life, of ẏ tenant in taile, & so it may wel be proued ẏ the tenant in ẏ taile may not graūt ne alien ne make any rightful estate of ẏ frāktenemēt to another ꝑson but for tme of his own life &c. For it I geue certein land in the taile to a man sauing ẏ reuersion to me & after the tenāt in the taile enfeoffeth another in fee, the feoffe hath no right estate in the tenements for two causes. One is for that by such feoffemēt my reuersion is discontinued which is a wrōge acte & not a rightful act. Another cause is, if the tenant die, and his issu sueth a writ of Formedon against the feoffee, the writ shal say & also the declaration, ẏ the feoffe wrōgfully him deforced, therfore if wrōgful he hī deforced, he hath no right estate.

¶ Also, if land bee let to a man for terme of his life, the remainder to another in the taile if he in ẏ remainder wil graunt his remainder to another in fee by his deede, & ẏ tenant for terme of life attourneth, this is no discontinuance of the remainder.

¶ Also, if a man bee tenaunt in the tayle of aduowson in grosse or of cōmon in grosse, if he by his

by his deede will graunt the aduowson or ꝑ common to another in fee this is not discontinuance, for in such case the grauntee hath no estate but for terme of lyfe of the tenant in the taple ꝑ made this graunt &c. ¶ Note wel ꝑ such things as passe by way of grant made by deede, made in the countrey &c. such graunt maketh no discontinuance as in the case aforesaid & other like cases &c. And howbeit ꝑ such things be graunted in fee by fine leuied in ꝑ kinges court &c. yet they make no discontinuance &c.

¶ Also, if a mā bee seised in taile of landes deuisable by testament &c. & hee deuiseth it to another in fee, and dieth, & ꝑ other entreth, this is no discontinuāce, for this ꝑ no discontinuance was made in ꝑ life of ꝑ tenaunt in ꝑ taile &c.

¶ Also if an abbot haue a reuersion or a rent seruice or a rent charge, and will graunt ꝑ reuersion, rent seruice, or rent charge to another in fee, & the tenant attorneth &c. this is no discontinuance. In ꝑ same manner it is where an abbot is seised of aduowson or of suche things ꝑ passe by way of graunt without tyuery of seisin &c.

¶ Also, if there bee graundfather, tenaunt in the taple, father and sonne, and the graundfather is disseised by the father, and the father maketh a feoffement in fee without warrantise and dyeth, and after the graundfather dyeth, the sonne may well enter vpon the feoffee

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for this that this was no discontinuance, in so muche ỳ the father was not seised by force of ỳ male at the time of the feoffement &c. but was seised in fee by discēt made to ỳ grandfather.

¶ Also, if a woman inheritrix haue an husbād within age, which maketh a feoffement of the tenements of the wife and dyeth, it hath bene questioned if the wife may enter or not. And it seemeth to some men that the entre of ỳ wyfe after the death of her husband shalbee lawfull in this case, for when her husband made suche a feoffement &c. he nught well enter notwithstanding such feoffement during the couerture and hee myght nor enter in his owne righte. but in the right of his wife &c. Ergo such right that hee had to enter in the right of his wife &c. that right of entre abydeth to the wyfe &c. after his decease, and it hath bene sayde, that if two ioyntenantes beinge within age, made a feoffement in fee, & one of the children dieth, & the other suruiueth, in so much that both children might entre ioyntly in their liues, thys right of entre groweth all to him that suruyueth, and so may entre into the whole &c.

¶ Also the heire of the husband that made the feoffement within age may not enter, for this ỳ no right descendeth to such an heire in the case aforesayd, for this that the husband had neuer any thing but in ỳ right of his wife. And also when a chylde maketh a feoffement beynge vnder age, this shall neuer grieue nor hurt him but ỳ he may wel enter &c. And this shoulde

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be against reason that such a feoffement made by hym þ was not able to make such a feoffement shall grieue or hurt other, to toll other of their entrees &c. And for these causes, it seemeth to some þ after the death of such a husband so being within age at the time of the feoffement &c. that his wife may wel enter &c.

¶ Also if a woman inheretrice taketh an husband and hath issue a sonne & the husband dieth & she taketh another husband, and the second husband letteth þ land that he hath in þ right of his wife to another for terme of his life, & after the wife dieth, & after the tenant for term of life surrendreth his estate to the second husband &c. Enquire if the sonne of the wife may enter or not, in this case vpō þ second husband during the life of the tenant for terme of life. But it is clere lawe in thys case þ after the death of the tenaunt for terme of life, the sonne of the wife may well enter, for this þ the discontinuance þ was made alonely for terme of life is determined &c. by the death of the same tenant for terme of life &c.

¶ Also if þ person or vicar of a church alieneth certeine landes or tenementes parcell of hys glebe &c. to another in fee & dieth, or resigneth &c. his successour may wel enter, notwithstanding such alienation as it is sayde in a Note. Anno 2. Henric. 4. Termino Mich. que sic incipit. Nota quod dictū fuit pro lege. In a writ of Accompt brought by the maister of a Colledge, that if a parson or a vicar graūt certein lands

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that is of the right of his church to another & dieth or chaũgeth, that his successor may enter. And I trow ẏ cause is for this ẏ the parson or vicar ẏ is seised &c. in right of the church hath no righ of ẏ fee simple in the tenements but the right of the fee simple there of abydeth in an other person. And for this cause his successour may wel enter notwitstanding such alienation &c. for a Bishop may haue a writ of right of tenements of right of his Bishoprich, for this that the right of fee simple abydeth in him & in his capiter, and a Deane may haue a writ of right &c. for this that the right abydeth in him and in his chapiter, and an Abbot may haue a writ of right, for this ẏ ẏ right abideth in him & in his couẽt, & sic de aliis casibus consimilibus &c. but a ꝑson or vicar may not haue a writ of right &c. but ẏ highest writ that they may haue, is a writ de iuris vtrũ, ẏ which is a great proofe that the right of fee simple is in abeiance that is to say all onely in the remembrance, entendement & consideration of the law, for mee seemeth that such a thinge in such a right that is said in diuers bookes to be in abeyance, is as muche to say in latin S. talis res vel tale rectum que vel quod non est in homine ad tunc superstite, sed tantummodo est & consistit in consideratione & intelligentia legis &c. & quidam alii dixerunt talem rem aut tale rectum fore in nubibus &c. But I suppose ẏ they vnderstand these worde in nubib⁹ &c. as I haue said before. ¶ Also if a person of a Church dye, now the

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franktenement of the glebe of the personage is in no man, during the time that the personage is void, but is in abeiance, that is to say in consideration & intelligence of the law, til another be made parson of ẏ same church, & immediatly when another is person, the franktenement in deede is to him as successour.

¶ Also some men peraduenture wil argue & say, ẏ in so much that the person with thassent of the patron & Ordinary, may graunt a rent charge out of the glebe of his personage in fee, & so charge the glebe of his personage perpetually Ergo they haue fee simple or two or one of thē hath fee simple at the least &c. So this it may be aunswered, ẏ it is a principal in lawe, that of euery land there is a fee simple in some man or els the fee simple is in abeiance &c. And another principal is, ẏ euery land of fee simple may be charged with a rent charge in fee, by one way or by another &c. and when such rent is graunted by the deede of the person the patrone and the Ordinarye in fee, none shall haue no preiudyce nor losse by force of such graunt. But the grauntours in their liues, & the heire of the patrone, and successours of the Ordinary after their deceases, and after such charge if the person dye, hys successour may not come to the said Church to be person of the same church by the lawe. But by presentment of the patron and admission and institucion of the Ordinary &c. And for this cause it behoueth that the successour hold him content

and

and agreed, with that which his patron & Ordinary lawfully haue don before. But ꝑ cause that such rent charge is gone, is for this, that they which hath entries in ꝑ said church, that is to say, the patron after the law temporall, & the Ordinarye after ꝑ law spiritual, were assented as parties vnto such a charge &c. & this meneth the very cause that such glebe may bee charged in perpetuitie &c.

¶ Also if a Bishop alien landes which bene parcel of his bishoprick, & dieth this is a discõntinuance to his successor, for this that hee may not enter, but is put to his writ De ingressu sine assensu Capituli &c.

¶ Also if a Deane alien lande parcel of hys Deanry, & dyeth, his successour may not enter but he may haue a writ De ingressu sine assensu Capituli &c.

But if the Deane & the Chapiter haue lãd to thẽ & to their successors in common &c. Howbeit ꝑ the Deane alien such lands his successours may wel enter, for this that the frankte-nement at the time of the alienation, was as wel in ꝑ Chapiter as in ꝑ Deane. But where the Deane is sole seysed as in ryght of hys Deanry, then such alienation is discontinuante to his successour, as it as afore sayd. Also some men wil argue and say, that if an Abbot & his couent bee seised in their demeane as of fee, of certaine land to thẽ and to their successours &c. and the Abbot without assent of hys couent, alyeneth the same lande vnto another,

and

& dyeth, this is a discontinance to his succes-sours &c. by the same they will say, þ where a Deane & a Chapiter be seised of certein land to them & to their successors, if the Deane alie the same lands &c. this shalbe a discontinuaunce to his successors. So þ his successor may not enter &c. To his may be answered, that there is a great diuersity betwene the said two cases for when an Abbot & the couēt be seised &c. yet if they be disseised, the Abbot shall haue assise in his own name wout the naming of his couent &c. And if a man may or will sue a Prae-cipe quod reddat, of the same landes when they be in the handes of the Abbot and his couent, it behoueth that such an action be sued against the Abbot onely without naming of þ couent, &c. for this, that al thy be de ad personis in the law, saue onely the Abbot þ is soueraigne &c. & this is bee cause of the souerātie &c. for els he should be as one of þ other monks of the Co-uent &c. But the Deane & the Chapiter be no dead persons in the lawe &c. For eache of them may haue an action hy him self in diuers cases and of such landes or tenemēntes which the Deane and Chapiter haue in common &c. if they be disseised, that the Deane & the Chap-ter shal haue assise, & not the Deane alone, & if another will haue an action real of such lāds or tenemē as against the Deane &c. it behoueth him to sue against the Deane and Chapiter, & not against the Deane alone &c. & so appeareth great diuersitie betwene these two cases.

¶ Also

¶ Also if the master of an hospitall discontynue certain land of his hospital, his successour may not enter, but hee is put into his writt de ingressu sine assensu cõfratrũ & sororũ suarũ, and all such writs doo plainly appeare in the Register. &c.

¶ Remitter.

REmitter is an auncient terme in the Lawe, and it is where a man hath two tytles to landes or tenementes, that is to say, of an elder tytle, and an other of the latter tytle, and he commeth to the lande by the latter tytle, yet the lawe adiudgeth him to bee in by force of the elder tytle, for this, that the elder tytle is the more sure tytle, and the more worthy tytle, and then when a man is iudged in by force of the more elder tytle, thys is vnto him sayd a Remitter, for this that ỹ law shal admit him to bee in the lande by the elder tytle: as if the tenaunt in the tayle discontinue the taile, and after he disseiseth his continue, and so dyeth seised, whereby the tenementes discende to his issue, as to his cosin inheritable by force of the tayle, in this case this is to him whom the tenementes discende, which hath right by force of the tayle, a Remitter in the tayle taken, for that, that the lawe shall put and adiudge him to be in by force of the tayle, which is his elder tytle, for if he shall bee in by force of dyscent, then the discontinue may haue a writt of Entre vppon the disseysin in the Per against him, and recouer the tenementes, and

his dammages, but in so much that he is in by force of the taile, the title & the interest of ỹ discontinue, is all vtterly adnulled & defeated &c.

¶ Also if tenant in the taile infeoffe in fee his sonne or his cosin inheritable by force of the tayle, the which sonne or cosin, at the tyme of the feoffmēt is within age, & after the tenaunt in the tayle dyeth, and hee to whom the feoffement was made is his heyre by force of his title in the tayle, this is a Remitter to the heyre in the tayle, to whom the feoffement is made. For howbeit that during the life of the tenant in the tayle that made ỹ feoffement, such heyre shalbe adiudged in by force of ỹ feoffemēt, yet after the death of the tenaunt in the tayle, the heyre shall be adiudged in by force of the taile &c. and not by force of the feoffement, & though that such an heyre was of full age at the time of the death of the tenannt in the tayle that made the feoffement, this maketh no matter if the heyre were within age at the tyme of the feoffement made to him, and if such an heyre beeing within age at the time of the feoffement commeth to full age, lyuing the tenaunt that made the feoffement, and so being of full age, hee chargeth by his deede the same lande with a common of pasture, or with a rent charge, and after the tenaunt in the tayle dyeth: Now it seemeth that the lande is discharged of ỹ common, & of the rent, because the heire is in by an other estate in ỹ land, then he was at the tyme of the charge made, in so much

much that he is in hys Remytter by force of the tayle, and so the estate that he had at the tyme of the charge is vtterly defeated. &c.

¶ Also a principall cause why such an heyre in the cases aforesayd, and other cases semblable shalbe sayd in his remitter, is for this, that there is no person against whom that he may sue his writte of Formedon, for agaynst him selfe he may not sue, & he may not sue agaynst none other, for none other is tenant in ꝑ frank tenement, & for that cause the lawe adiudgeth hym in his remytter, that is to say, in such right as he had lawfully recouered the same lande agaynst an other.

¶ Also if lande bee tayled to a man and hys wyfe, and to the heyres of their two bodies engendred, the which haue issue a daughter, and the wyfe dyeth, and the husbande taketh an other, and hath issue an other daughter, and discontinueth the tayle, and after he disseiseth the discontinue, and so dyeth seysed, now the lande discendeth to the two daughters, in thys case as to the elder daughter that is inheritable, thys is a Remytter but of the halfe, and as to the other halfe, she is put to her action of Formedon against her suster, for in thys case two sisters bee not tenaunts in parcenary, but bee tenants in common, for this that they be in by seuers tytles, for the one suster is in her Remytter by force of the tayle, as to that ꝑ vnto her belongeth. And the other suster is in, as to that, that belongeth to her in fee simple by the

diſcent of her father. In the ſame maner it is if the tenaunt in the tayle enfeoffe hys heyre apparaunt in the tayle the heyre being within age, and an other ioyntenaunt in fee, & the tenaunt in the taile dieth. Now the heyre in the taile is in his remitter as to ỹ halfe, & as to the other halfe he is put to his writ of formedon. &c.

¶ Alſo if tenaunt in the taile enfeoffe his heyre apparaunt, the heire being of full age at time of the feoffement and after the tenaunt in tayle dyeth, thys is no Remitter to the heire, for this that it was his owne folly, that he being of full age, would take ſuch feoffement. &c. But ſuch folly may not bee adiudged in the heyre being within age at the time of the feoffement. &c.

¶ Alſo if tenant in the tayle enfeoffe a woman in fee, and dyeth, and his iſſue within age taketh the woman to wife, this is a Remitter to the child, and the wife thē hath nothing, for this that the huſband & the wife bene but one perſon in the law. And in that caſe the huſband may not ſue a writ of Formedon vnles he will ſue againſt himſelfe, the which ſhall bee inconuenient, & for that the law iudgeth the heyre in his remitter, for this that no folly may be accted to him being within age at the time of the ſpouſayles &c. And if the heyre be in his remitter by force of the taile, it followeth by reaſon that the wife hath nothing &c. For in ſo much that the huſband & the wife be but one perſon the land may not be ſeuered by halfes, and for ſuch cauſe the huſbande is in his remitter of

the

the whole. But otherwise it is, if such an heire bee of full age at the time of the spousayles, then the heyze hath nothing but in the right of his wyfe.

¶ Also, if a woman seised of certain lande in fee, taketh an husbande, the which alieneth the same lande to another in fee, and the alyene letteth the same lande to the husbande, and the wife for terme of theyr two liues, sauing the reuersion to the lessour, & to the heyze, in thys case the wife is in her remitter, and shee is seysed in deede in her demeane as in fee, as shee was before, for this, that the taking of estate shalbe adiudged in the iawe the deede of the husbande, and not the deede of the wyfe, so that no folly may bee iudged in the wyfe that is couert in such case. And in this case the lessour hath nothing in the reuersiõ, for this that the wyfe is seised in fee. But in this case if the lessour wyll sue an action of waste against the husbande and hys wife, for this, that the husband hath made waste, the husband may not barre the lessour for to shewe this that the taking of estate made vnto him and to his wyfe made a remitter to hys wife, for thys that the husband is stopped to say this against his feoffement and owne reyzisel of estate for terme of lyfe to him and his wife, and yet the lessour hath no reuersion, for this þ the fee simple is in the wyfe. So a man may see a matter in thys case that a man shall bee estopped by a matter in deede, though no writing by deede inden-

ted or otherwyse be therof made. But if in an action of waste the husbande made default at the graunde dystresse, and the wyfe prayeth to bee receyued, and is receyued, shee shall shewe all the matter, and how shee is in her remytter, and shall barre the lessour of hys action. For in euery case that the wife is receyued for default of her husband, she shall plead and haue the same aduauntage in pleading as she were a woman sole. And howbeit that the alienee made no lease to the husbande and hys wyfe by deede endented, yet this is a remytter to the wyfe, and thoughe the alienee yelded the same lande to the husband and hys wyfe by fyne for terme of theyr lyues, yet this is a remytter to the wyfe, for this that the wyfe couert taketh estate by fyne shall not bee examined by ỳ Justices. And here note wel that when any thing shall passe from the wyfe that is couert of husband by force of a fyne, as the husband & wyfe make conueiance of right to an other &c, or make a graunt to yeelde to another, or release by a fyne to another. Et sic de similibus where the ryghte of the wyfe passeth from the wyfe by force of the same, the wyfe in all such cases shall be examined before that the fyne be accepted. And such fynes conclude such wyues couert for euer. But where nothing is moued in the fyne, but al only that the husbande and the wyfe take estate by force of the same fyne, this shall not conclude the wyfe, for thys that in such case shee shall neuer be examined.

Also

¶ Also, if tenant in the taile discontinue the tayle, and hath a daughter and dyeth, and the daughter being of full age taketh an husband, and the discontinue maketh a lease of this to the husband and his wife for terme of theyr lines, thys is a remitter in deede of the wyfe, and the wyfe is in by force of the tayle, Causa qua supra.

¶ Also, if land be giuen to the husbande and his wyfe, to haue and to holde to them, and to the heyres of their two bodies begotten, and after the husband alieneth the lande in fee, and taketh againe an estate to him and to his wyfe for terme of theyr two lines. In this case thys is a Remitter in deede to the husband and the wife manger the husband, for it may not be a remitter to the wife, except it be a remytter to the husband for this that the husband and hys wife be but one person in the law, though that the husband is stopped to clayme this to be a Remitter in him against his alienation and his owne reprysel as it is aforesaid.

¶ Also, if lande be gyuen to a woman in the tayle, the remaynder to an other in the tayle, the remaynder to the thirde in the tayle, the remaynder to the fourth in fee, and the wife taketh an husbande and the husband discontinueth the lande of the wyfe, by this discontinuance, all the remainders be discontinued, for if the wyfe dye wythout issue, they in the remaynder shall haue no remedy, but to sue theyr writes of Formedon in the Remainder when they come to theyr time &c. But yf after such discontinuaunce, estate be made to

the husbande and his wyfe for terme of theyr two lyues, or for terme of an others life, or an other estate &c. for this, that this is a Remitter to the wyfe, this is a Remytter to al those in the remaynder &c. For after this that the wyfe that is in her remytter dyeth wythout issue, they in the remaynder may enter &c. with out any action or sute &c. In the same manner it is of them which haue the reuersion after such tayle &c.

¶ Also, if a man let a house to a woman the terme of her life, sauing the reuersion to the lessour, and after one sueth a faynt and false action against the woman, and recouereth the house against her by default, so that the woman may haue agaynst hym a wryt Quod ei deforciat, after the Statute of Westm. the second Capit 4. Now is the reuersion of the lessour dyscontinued, so that he may haue no action of wast. But in this case if the woman take an husband, and hee that recouereth letteth the house to the husband and hys wyfe for terme of their two liues, the wife is in her remitter by force of the first lease. And yf the husband and the wyfe make waste, the fyrst lessour shall haue against him a wryt of waste for this, that in so much that the wyfe is in her remytter, he is remytted to his reuersion. But it seemeth in this case if he that here commeth by the false action, wyll bring an other wryt of waste against the husbande and hys wyfe, the husbande hath no remedye agaynst hym, but to make default at the great distresse

&c.

&c. And to cause the wyfe to bee receyued and to pleade the matter against the second iessour and to shewe that the action by which hee recouered was false and famed in the lawe, and so the wife may barre. &c.

¶ Also, if the husband discontinue the lande of his wife, & after taketh estate to him and to hys wife, & to the third man for terme of their liues, or in fee, this is a remitter to the woman but as to the moity. and as for the other moitye it behoueth her after the death of her husband to sue a Cui in vita.

¶ Also, if the husbande discontinue the lande of hys wyfe, and goe ouer the Sea, and the discontinue let the same lande to that woman for terme of lyfe, and deliuer to her seysin, and after the husbande commeth & agreeth to that liuerie of seisin, thys is a Remytter to the woman, & yet if the woman had beene sole at that time of her lease made to her, this should be to her a remitter, but in so much as she was couert baron at the time of the lease, and the liuery of seisin made to her, though that she only take the liuery of seisin, this was a Remitter to her, because a woman couert shall bee adiudged as an infaunt wythin age in such a case &c. Enquire in this case, if the husband when he commeth agayne wyll disagree to the lease and liuery of seysin made to his wyfe in his absence, if thys shall put the woman from her remitter.

¶ Also, if the husbande discontinue the tenementes of his wyfe, and the discontinue is dis-

dysseised, and after the disseisor letteth the sayd tenements to the husbande and his wyfe for terme of life, this is a Remitter to the wife, but if the husbande and the wyfe were of couin or consent that ꝑ disseisin shoulde be made then it is no remitter to ꝑ wife, because she is a disseisouresse. But if the husband were of couin & consent to the disseisin, and not the wife, then such lease made to the wyfe is a remytter, because that no default was in the wyfe

¶ Also, if such a discontinue had made estate of frœ holde to the husband & the wyfe, made by Indenture vpon condition. S. reserving to the discontinue a certaine rent, and for default of payment a recntre, & because that the rent is behind, the discontinue entreth, of this rent the woman shall haue assise of Nouel disseisin after the death of her husbande agaynst the discontinue, because that the condition was wholly adnulled, in so much as ꝑ woman was in her remitter, yet the husband with his wife could not haue assise because the husband is stopped.

¶ Also, if the husbande discontinue the tenementes of his wife, and taketh estate agayne for terme of hys lyfe, the remaynder after his decesse to his wyfe for terme of her lyfe, in thys case this is no remitter to the wyfe during the lyfe of her husbande, because that during the life of her husband, the wyfe hath nothing in the frœ hold, but if in thys case the wyfe ouerlyue the husband, this is a remitter

to

to the wyfe because that the free hold in law is fallen vppon her, mauger her wyll, and in so much that shee can haue no action agaynst none other person, and agaynst her selfe shee can haue no action, therefore shee is in her remitter. For in thys case though that the woman enter not in the tenements, yet a straunger that hath cause to haue action may sue hys action agaynst the woman of the same tenements, because shee is tenaunt in Law, though shee be not tenant in deede, for tenant of frank tenement in deede is he, that if he be disseised of franktenement may haue assise, but the tenant in the lawe before his entre shal haue no assise, and if a man seised in fee of certayne land hath issue a sonne which taketh a wife, and the father dyeth before any entre made by him into the land, the wyfe of the sonne shall be endowed in the lande, and yet he had no franktenement in the dede, but he had a fee and a frank tenement in the lawe, and so note well that a Precipe quod reddat may as well be maintayned agaynst him that hath the franktenement in Lawe, as agaynst him that hath franktenement in deede.

¶ Also, if a tenant in the taile haue issue two sons of full age, and he letteth the tayled lande to the elder son for terme of his life, the remaynder to the younger son for terme of hys lyfe, and after the tenant in the taile dyeth. In this case the elder son is not in his remitter because he toke estate of his father, but if the elder sonne die without issue of his body, then

thys

this is a Remitter to the younger brother, be cause he is heyre in the taile, and a franke tenement in Laxoe is fallen vpon him by force of the remainder, and there is none agaynste whom hee may sue hys action. In the same manner it is where a man is disseised and the disseisor dyeth thereof seised, and the tenements discende to hys heyre, and the heyre of the disseysour maketh a lease to a man of the sayde tenementes for terme of lyfe, the remainder to the disseisour for terme of life, or in taile or in fee, and the tenaunt for terme of lyfe dyeth. Now this is a remitter to the disseised &c. Causa qua supra.

¶ Also if tenant in the taile enfeffe hys sonne and an other of the tayled land in fee, and lyuerie of seisin is made to the other accordinge to the deede, the sonne not knowing thereof, nor agreeing to the feoffement, and after hee that tooke the lyuerye of seisin dyeth, and the sonne occupyeth not the laude, nor taketh any profite of the lande during the lyfe of hys father, and after the father dyeth, nowe thys is a remitter to the sonne, because the freeholde is fallen vppon him by the surueiour, and no default was in him, because hee neuer agreed, &c. in the life of his father, and there is none agaynst whome hee may pursue hys writ of Formedon, &c. For if a man bee disseised of certain land, & the disseisor maketh a deede of feoffement, whereof he enfeoffeth B. C. and D. and the liuery of seisin is made to B. and C. but D. was not at the liuery of seisin nor neuer

ner agreed to the feoffement nor neuer would take the profits. &c. And after B & C, die and D. ouerliueth them, and the disseisy bringeth hys writte, sur disseisin in the Per, against the same D. he shall shew all ỹ matter & how ỹ he neuer agreed to the feoffement, and so he shall discharge him selfe of dammages, so that the demaisdant shall recouer no dammage against him though that he be tenaunt of franketenement of the lande. And yet the statut of Glocester wyll that the disseisye shall recouer dammages in a writ of entre grounded vpon the nouel disseisin against him that is founde tenaunt. And thys is a proofe in the other case that in so much as the issue in the taile commeth to the franktenement not by his deede, nor by hys agreement, but after the death of hys father, this is a Remitter to him, in so much that he can sue an action of formedon against none other person.

¶ Also if an Abbot alien the lande of hys house to an other in fee, and the alien by hys deede chargeth the land with a rent charge in fee, and after ỹ aliene enfeoffeth ỹ Abbot with licence, to haue and to holde to the Abbot and his successours for euer, & after the Abbot dyeth, and another is chosen & made Abbot: In thys case the Abbot that is the successour, and his couent be in theyr remitter, and shall holde the land dyscharged, because ỹ the same Abbot cannot haue an action by hys writ of Entre Sine assensu capituli of the same landes against none other person. In the same maner it is

where

where a Bysshop or Deane or other such persons alyen &c. wythout assent &c. And after the Bysshoppe taketh estate agayne of the said Lande by lycence to hym, and to hys successours, and after the Bysshop dyeth, hys successour is in hys Remitter as in the right of hys Church, and shall defeate the charge &c. Causa qua supra.

¶ Also if a man sue a false action agaynst tenaunt in the tayle, as if a manne wyll sue agaynst him a writ of Entre in the Post, suppo sing by his wrpt that the tenaunt in the taile had not hys entre but by A. of B. ꝑ disseysed the graundfather of the demaundant, and that is false, and he recouereth against the tenaunt in the tayle by defaut, and sueth execution, and after ꝑ tenant in the tayle dyeth, hys issue may haue a writ of Formedon against him that recouered, and if hꝰ wyll pleade the recouery agaynst the tenaunt in the tayle, the issue may say that the sayde A. of B. dysseised not the graundfather of hym that recouered in such manner as hys wrpt suppoſeth, and so he shal falsify hys recouery. Also suppose that that was true that the sayde A. of B. dissepsed the graundfather of the demaundaunt that recouered, & that after the disseisin the demandant or hys father, or hys graundfather, by a dede had released to the tenaunt in the tayle all the ryght ꝑ he had in the lande. &c. And this notwithstanding he sueth his writ of entre in the Post agaynst the tenant in the tayle in ꝑ maner

as

as is aforesayde, and the tenaunt in the tayle pleadeth to hym, that the sayd A. of B. dissey-sed not his grandfather as his writ supposeth and vpon thys they be at issue, and the issue is found for the demaundant, wherby he hath iudgement to recouer, and sueth execution, and after the tenant in the taile dieth, his issue may haue a writ of Formedon agaynst hym that recouered. And if he wyll pleade the recouery by action tryed against his father tenant in the tayle, then he may shew and pleade the re-lease made to his father, and so the action that was sued was faynt in the Lawe. &c. And it seemeth that faint action is as much to say in English as fayned action, that is to say, such action, that though the wordes of hys writ bee true, yet for certaine causes he hath no cause nor title by the lawe to recouer by ꝑ same action. And false action is, where the wordes of the writ be false, and in the two cases be-foresayde, if the case were such that after such a recouery, and execution thereof made, the te-naunt in the tayle had disseised him that reco-uered and thereof dyed seised, whereby the lande also discended vnto hys issue, thys is a Remitter to the issue, and the issue is in by force of the tayle, and for that cause I haue put these two cases beforesayde to enforme thee (my Sonne) that the issue in the taile by force of a dyscent made to hym after a re-couery and execution thereof made agaynst his auncestor, may be as well in hys remitter

as

as hee ſhould be by diſcent made to him after a diſcontinuance made by his anceſter of ꝑ tailed land by feffement in the country or otherwiſe.

¶ Alſo in the ſame caſe aforeſaid, if the caſe were ſuch that after the demaũdant had iudgment to recouer againſt the tenaunt in tayle, and the ſame tenant in the tayle dyed before any execution had agaynſt him wherby the tenements diſcend to his iſſue, and hee that recouered ſued a Scire facias to haue execution of the iudgement againſt the iſſue in the taile, the iſſue ſhall pleade the matter as before is ſayde and ſo ſhall prooue that the recouery was falſe or faint in the lawe, and ſo ſhall barre hym to haue execution of the iudgment &c.

¶ Alſo if tenaunt in the tayle dyſcontinue the tayle & die, & his iſſue bringeth a writte of Formedone agaynſte the dyſcontinue, being tenaunt of the free holde of the Lande, and the diſcontiuue pleadeth that he is not tenant, but otherwyſe diſclaimeth from the tenancy in the lande, in this caſe the iudgement ſhall bee that the tenaunt goe without day, and after ſuch iudgement the iſſue in the taile that is demandaunt may well enter in the Lande notwythſtanding the dyſcontynuaunce. And by ſuch entre he ſhalbe adiudged in hys Remytter, and the cauſes, becauſe that if any manne ſue a Præcipe quod reddat agaynſt any tenaunt of free holde, in which action the demaundaunt ſhall not recouer dammages, and the tenaunt pleadeth not Non tenute, but otherwyſe diſclaimeth

meth in the tenancy, the demaundant may not auerre in the writ that he is tenant as ỹ writ suppoſeth. And for that cauſe the demandant after that the iudgment is gyuen, the tenaunt ſhall goe without day, may enter into the tenements demaunded, the which ſhall bee as great aduauntage to him in the lawe, as if he had iudgement to recouer agaynſt the tenant. And by ſuch entre he is in the Remitter by force of the tayle, but where the demaundant recouereth dammages agaynſt the tenant, ther the demaundant may auerre that he is tenant as the writ ſuppoſeth, and that for the aduantage of the demandant for to recouer his dammages, or els he ſhall not receiue his dammages, the which dammages be or were gyuen hym by the lawe.

¶ Alſo, if a man be diſſeiſed, and the diſſeyſour die, his heyre beeing in by diſcent, nowe entre of the diſſeiſi is taken away. And if the diſſeiſy bring hys writ of entre vpon the dyſſeiſid in the Per against the heyre, and ỹ heyre diſclaymeth in the tenancy &c, the demaundant may auerre his writ that he is tenaunt as the writ ſuppoſeth if he wil leaue the auerrement &c. he may lawfully enter into the land, becauſe of the diſclaimer, notwithſtanding that his entre before was taken away. And that was adiudged before my maſter ſir Robert Danby late cheefe Iuſtice of the common place, and hys companions.

¶ Also where the entre of a man is lawfull though that he take estate to him when hee is of full age for terme of life, or in taile or in fee, this is a Remitter to him, if such taking of estate be not by deede indented, or by matter of recorde that shall conclude or stop him. For if a man be disseised and thereof taketh estate of disseisour without deede or by deede poll, that is a good remitter to the disseisy.

¶ Also, if a man let land for terme of life to another which alieneth to an other in fee, and the alienor maketh estate to the lessor, thys is a Remitter to the lessor because his entre was lawfull.

¶ Also if a man be disseised, and the disseysor letteth the land to the disseisy by deede poll or without deede for terme of yeeres, wherby the disseisy entreth, this entre is a Remitter to the disseisy. For in such case where the entre of a manne is lawfull, and a lease is made to him though that he clayme by wordes in the countrey that hee hath estate by force of such lease, or sayth openly that hee claymeth nothing in the land, but by force of such lease, yet thys is a remitter to him, for such clayme in the countrey is nothing to purpose: but if he claime in a court of Recorde, that hee hath estate but by force of such lease and not otherwise, then his is concluded &c.

¶ Also, if two ioynctenaunts seised of certaine land in fee, the one being of full age, the other within age be disseysed, and the disseisor dieth seised and his issue entreth, the one of the

ioynte-

ioynetenants being then within age, and after that hee commeth to full age, the heyre of the disseisor letteth the lande to the same ioynetenauntes for terme of theyr lyues, thys is a Remytter as to the halfe to hym y was with in age, because that hee is seised of the moitye that belongeth to him in fee, because his entre was lawfull. But the other ioyntenant hath in the other halfe but estate for terme of lyfe by force of the lease, because hys entre was taken away. &c.

¶ Warrantie.

IT is commonly sayd, that there be three maner of warranties, that is to say, warrantie lineall, warraty collaterall, and warrantye that beginneth by disseisin. And it is to wete that before the statute of Glocester all warranties which discended to thē which were heires to them that made the warranty, were barres to the same heires to demaund any landes or tenements against those warranty, except the warranties that began by disseysin, for suche warranty was neuer barre to the heyre, because the warranty began by wrong, that is to say, by disseisin.

¶ Warranty that beginneth by disseisin is in such forme. As where there is father and son, and the son doth purchase land &c. and letteth the same land to his father for terme of yeres and the father by the dede thereof enfeoffeth a nother in fee, & bindeth him and his heyres to

warranty, and if the father die, whereby the warranty discendeth to his sonne, thys warranty shal not barre the sonne, for notwithstãding this warrantie the sonne may well enter in the lande or haue an assise against the aliene if he wyl, because the warranty began by disseisin. For when the Father that had no estate but for terme of yeres made a feoffement in fee, this was a disseisin to the son of the franktenement that then was in the sonne. In the same manner it is if the sonne let vnto the father the lande to hold at wyll, and after the father maketh a feoffement with warranty. &c. And as it is sayde of the father, so may it bee sayde of euery other auncester. &c.

¶ In the same maner it is if tenãt by Elegit tenant by statut merchaunt, or tenant by statute staple, make a feoffement in fee wyth warranty &c. thys shall not barre the heyre that ought to haue the land, because that such warranty begin by disseisin.

¶ Also, if a warden in chivalrye or warden socage make a feoffement in fee, in fee taile, or for fine of life with warrantie &c. Such warranties be no barres to the heyres to whome the lande shall discend, because that they begin by disseisin.

¶ Also, if the father and the sonne purchase certaine landes or tenements, to haue and to holde to them ioyntly &c. and after the father alieneth ye whole to another, & bindeth him and his heires to warranty &c. and after the father dieth, this warranty shal not barre the son of the moity that belongeth to him of the same tenements

nements because that as to the moity that belonged to the sonne, the warranty beganne by disseisin.

¶ Also, if A. of B. be seised of a mease, and F. of G. that hath no right to enter in the same mese claiming to holde the same mese to him and to hys heyres, enter into the same mese, but A. of B. then is continually dwelling in the same mease, in this case the possessyon of the franktenement shallbe adoap adiudged in A. of B. & not in F. of G. because that in such case where two be in one mese, or in other tenements, and that one claymeth by one tytle, and the other by an other title, the Lawe shall adiudge him in possession that hath right to haue the possession of the same tenement. But in the case afozesayd if F. of G. make a feoffement to certaine barretours and extoztioners in the countrey foz to haue maytenance of them of the same mese by a dæde of feoffement with warrant, by foꝛce of which ſ sayde A. of B. dare not dwell in the same mese, but goeth out of the same mese, thys warrant beginneth by disseisin. because that such a feoffement was cause that the sayde A. of B. left the possession of the same mese.

¶ Also, if a man that hath no ryght to enter in anothers tenements, enter into the sayd tenementes, and in continent maketh a feoffement to other persons by hys dede with warrantie, and deliuereth to them seisin, this warrantie beginneth by dysseysin, because that the disseisin and the feoffement were made as it were at one time. And that thys is law, yee

may see it in a plee. An. 21. Ed. 3. in a wryt of formedon in the reuersion.

¶ Warrantie lyneall, is where a man seysed of certaine lande in fee maketh a feffement by his dede to another, and bindeth hym and hys heires to warranty, & hath issue and dieth, and the warranty discendeth to his issue, this is a lyneal warranty. And the cause why this is a lyneal warranty, is not because ỳ the warranty discended from ỳ father to his heire, but the cause is, because ỳ if no such deede with warranty had beene made by the father, then the right of the tenementes shoulde discende to the heyre, and the heire shoulde conuey the discent from the father to hym: if there bee father and sonne, and the sonne purchase tenementes in fee, and the father disseiseth the sonne thereof and alieneth it to an other in fee by hys deede, and by the same deede byndeth him and hys heyres to warrant the same tenementes, and so dyeth, and the father dyeth, now is the sonne barred to haue the said tenements, for he may by no sute nor by any other meanes haue the sayd tenementes, because of the sayde warranty. And that is a collaterall warrantie, and yet the warranty dyscendeth lineallye from the father to the sonne. But because that if such deede with warrantye hadde beene made, the sonne in no manner myght conuey the title that he hath of the tenementes from hys father to hym, in so much that hys father had no estate nor right in the tenements

ments, therefore such warranty is called collaterall warranty. In so much that he ỹ made the warranty is collaterall to the title of the tenement, and that is as much to say, that he to whom warranty discended, coulde not conuey the title that he had in the tenementes by him that made the warranty in thys case, if no such warranty had beene made.

¶ Also, if there be graundfather, father, and sonne, and the graundfather is disseised in whose possession the Father releaseth by hys deede which warranty &c. and dieth, and after the graundfather dyeth, nowe is the sonne barred of the tenementes by the warranty of his father, and this is called lineall warrenty, because that if no such warrentye hadde beene made, the sonne might not haue conueyed the right of the tenements to him, nor shewe how he is heyre to the graundfather but by meanes of the father &c.

¶ Also, if a man haue issue three sonnes, and is disseised, and the elder sonne releaseth to the dysseysour by hys deede with warrantye. &c. and dyeth without issue, & after this the father dyeth, this is a lineal warranty to ỹ yonger sonne, because that though the elder sonne dyed in the life of his father, yet by possibility it might be that hee might conuey to hym the tytle of the land by his elder brother, if no such warranty had beene made. For it might bee that after the death of the father, the elder brother entred into the tenements & died without issue, and then the younger sonne shall conuey

to him the title by his elder brother. But in thys case, if the younger sonne release with warranty to the disseisour and dyeth without issue, thys is a collaterall warrantie to the eldest Sonne, because that of such land, as was to the other, the elder brother by no possibilitie myght convey to him the title by meane of the younger brother.

¶ Also, if tenant in the tayle hath issue three sonnes, and discontinue the tayle in fee, and the middle sonne releaseth by his deede to the discontinue and bind him & his heires to warrantise &c. and after the tenant in the taile die, and the middle dyeth without issue, nowe is the elder sonne barred to haue any recouerye by a writ of Formedon because that the warranty of the middle brother is collateral to him, in so much that he may by no maner convey to hym by force of the tayle any discent by the myddle brother, & therfore he is a collaterall warranty But if in this case the elder brother dye with out issue, nowe the younger brother may well haue a Formedon in the discender, and recouer the same lande, because that the warranty of the middle brother is lineall to the younger brother, because it may be that by possibilitie the middle brother may be seised by force of the tayle after the death of his elder brother, and then the younger brother may convey his title of discent by the middle brother. &c.

¶ Also, if tenaunt in the taile discontinue the tayle & hath issue, and die, and the vncle of the issue release to ꝑ discontinue with warranty & dye

dye without iſſue, thys is a collaterall warrantie to the iſſue in the taile, becauſe that the warranty diſcendeth vppon the iſſue, which cannot conuey himſelfe to the tayle by meane of hys vncle.

¶ Alſo, if tenaunt in the tayle hath iſſue two daughters and die, and the elder daughter entreth into the whole, and thereof maketh a feoffement in fee ſwyth warranty, and after the elder daughter dieth without iſſue, in this caſe the younger daughter is barred as to the moity, and as to the other halfe ſhe is not barred, for as to the moity that belongeth to the younger daughter ſhee is barred becauſe that the moytye that belongeth to her, ſhee cannot conueye the dyſcent by the meanes of her elder ſiſter. And therfore as to the moytie that is a collaterall warrantye, but as to the other moyty which belongeth to her elder ſiſter by the ſame elder ſiſter, the warrantye is no barre to the younger ſiſter, becauſe that ſhe may conuey her diſcent as to that moity that belonged to her elder by the ſame elder ſiſter. And ſo as to that moity that belongeth to the elder ſiſter, the warranty as to that is lineal to the younger ſiſter.

¶ And note well that as to him that demandeth fee ſimple by any of his auncеſters, hee ſhalbe barred by lineall warranty which dyſcendeth vpon him, except it be reſtrained by ſome ſtatute, but he which demandeth fee taile by a ſwyt of Formedon in the diſcender, ſhall not be barred by lineall warranty, except hee

haue

haue ynough by diſcent in fee ſimple by ỳ ſame auncelter that made the warranty, but a collaturall warrenty is barre to him that demaundeth fee, and alſo to him that demaundeth fee, tayle, without any other diſcent of fee ſimple except in caſes that bee reſtrained by the ſtatute and other caſes for certain cauſes as ſhall be ſayd heereafter.

¶ Alſo, if land be giuen to a man and to hys heyres of his body begotten, the which taketh a wife, and haue iſſue a ſon betweene them, and the huſband diſcontinueth the tayle in fee, and dyeth, and after the wife releaſeth to the diſcontinuee in fee with warranty & dyeth, & the warranty diſcendeth to the ſon, this is a collaterall warrantie. But if tenements be gyuen to the huſband and the wyfe, & to the heires of their two bodies begotten, which haue iſſue a ſon, and the huſbande diſcontinueth the tayle and dieth, & after the wife releaſeth ỹ warranty and dyeth, this warranty is but a lyneall warranty to the ſonne, for the ſonne ſhall not be barred in thys caſe to ſue the wryt of Formedon, except hee haue enough by diſcent in fee ſymple by hys mother, becauſe that theyr iſſue in a wryt of Formedon ought to conuey to him the right as heire to hys father and to hys mother of their two bodies begotten by ſome of the gyft.

And ſo in ſuch caſe the warranty of the father and the warranty of the mother bee but as lineal warranties to the heire &c. And note well that in euery caſe where a man demaun-

deth

deth tenements in fee tayle by a writ of Formedon, if any of the issues in the taile that had possession or that hath possession make a warranty &c. if he that sueth the writ of Formedō might by any possibility by matter that might bee indeede conueye to him by him that made the warranty by the forme of the gyft. Thys is a lineall warranty, and not collateral.

¶ Also, if a man haue issue three sonnes, and he gyueth land to hys eldest sonne, to haue and to holde, to hym and to the heyres of hys body begotten, and for default of such issue, the remainder to the myddle sonne, to him, and to the heires of his body begotten, & for defaulte of such issue, the remaynder to the youngest sonne, and to his heyres of hys body begotten, in this case if the eldest sonne discontinue the tayle in fee, and bynde him, and hys heyres to warrantie, and dye without issue, thys is a collateral warranty to the middle sonne, and he shall be barred to demaunde the same lande by force of the remainder, because that the remainder is hys tytle, and his eldest brother is collaterall to the tytle which beginneth by force of the remainder.

¶ In the same maner it is if the myddle son had the same lande by force of the remaynder, because that his eldest brother made no discontinuance, but dyed wythout issue of hys body and after the middle sonne maketh a dysconty nuaunce wyth warranty &c. and dyeth without

out issue, this is a collaterall warranty to the youngest sonne, and also in this case if any of the sayd sonnes be disseised, and the father that made the gift release to the disseysour all his right &c. with warrenty, this is a collaterall warranty to the sonne vpon whom the warrantie discended, Cauta qua supra. And so note well that where a man that is a collaterall to the tytle &c. releaseth with warranty, that is a collaterall warranty.

¶ Also, if the father giue lande to hys elder sonne, to haue and to holde to him and to hys heires males of his bodie begotten, the remainder to the second sonne &c. if the eldest brother alien in fee with warranty &c. and hath issue female, and dieth without issue male, thys is not a collaterall warranty to the second sonne nor shall not hurt him of his action by Formedon in the remainder, because that the warranty discendeth to the daughter of the eldest sonne, and not to the seconde sonne. For euery warranty that discendeth, discendeth to hym that is heire vnto him which made the warranty by the common Lawe.

¶ Also, if land be gyuen to a man and to his heyres males of his body begotten, and for default of such issue the remainder therof to hys heyres females of his body begotten, and after the donee in the tayle maketh a feoffement in fee with warrantie according, and hath issue a son and a daughter and dieth, thys warrantie is but a lineall warranty to the sonne, to demaunde by writ of Formedon in the discendre

tendre. And it is but lineall to the daughter to demaund the same land by writ of Formedon to the remaynder, if her brother dye without heire male. because that shee claymeth as heyre female of the body of her father begotten. But in this case, if her brother in his life release to the discontinue with warranty &c. And after dye without issue, this is a collaterall warrantie to the daughter, because that shee cannot conuey to her the right that she hath by force of the remainder by anie meane of discent by her brother, and therefore the brother is collaterall to the title of his sister, and therefore his warranty is collaterall &c.

¶ Also, I haue heard say, that in the time of king Richard the second, there was a Justice in the common place dwelling in Kent, called Rikhil, that had issue diuers sonnes. And hys intent was, that his eldest sonne shoulde haue certaine landes to him and to his heyres of his bodie begotten, and for default of issue, the remainder to the seconde sonne and so forth. And so the thyrde sonne, &c. And because that he would that none of his sonnes should alien or make warrantye for to bar or to hurt the other that should be in the remainder &c. He caused to be made an indenture to such effect, that is to say, that the landes & tenements were gyuen to the eldest Sonne vppon thys condition, that if the eldest sonne alienes in fee or in fee taile &c. or any of his sonnes alyened &c. that then their estate shold cease & shold be

voyde

voyde, and that then the sayd landes or tenementes immediatly shoulde remayne to the seconde sonne, & to the heyres of his body begotten, and that vpon the same condition. s. that if the seconde sonne alien &c. that thē his estate should cease, and that then the same lands and tenements should remayne to the third sonne, and to the heyres of hys body begotten, and so forth, the remainder to the other of his sonnes and liuery of seisin was made according. But it seemeth by reason that all such remaynders in the forme beforesayde be voyde, and of no value, and that for three causes. One cause is, because euery remainder that beginneth by a deede, it behoueth that the remainder bee in him to whō the remainder is tayled by force of the same deede, when the liuery of seisin is made to him that hath the franktenement.

And such remainder was not to the second sonne at the time of liuery of seisin in the case beforesayd &c.

¶ The second cause is, if the fyrst sonne alien the tenements in fee, then is the franktenement and the fee simple in the alienee, and in none other, and if the deuour had any reuersion by such alienation, the reuersiō is discontinued, then though that by some reason it may bee that such remainder shall beginne his being and hys growing immediatly after such alienation made to a straunger that hath by the same alienation franketenement and fee symple, and also if such remaynder shoulde

be

be good, then myght he enter vppon the aliene where he had no manner of right before the alienation, which should be inconuenient. The third cause is when the condition is such that if the eldest sonne alien &c. that his estate shall cease, or shall be void &c. then after such alienation &c. may the donour enter by force of such condition &c. as it seemeth, and so the donor or his heires in such case ought more soner to haue the lande, then the second son that had no right before such alienation &c. and so it semeth that such remainders in the case beforesaid bee voyde.

¶ Also, at the common law before the statut of Glocestor, yf tenaunt by the curtesye had aliened in fee with warranty accordaunt, after hys decease, this was a barre to the heire, &c. as it appeareth by the wordes of the same statut. But it is remedied by the same statute, that the warranty of the tenaunt by the curtesye shalbe no barre to the heyre, except he haue ynough by discent by the tenaunt by the curtesie, for before the sayd estatute that was a collaterall warrantie to the heyre, because hee could not conuey any title of dyscent to the tenements by the tenaunt by the curtesy, but onely by his mother or other of his aunceſters &c. and that is the cause why it was collaterall warranty. But if a man inherite, take a wyfe, which haue issue a sonne between them and the father dyeth, and the son entreth into the lande, and endoweth his mother, and after hys mother alyeneth that that shee had in her

dower

dower to another in fee, with warrantie according, and after dieth, and the warranty discendeth to the sonne, now the sonne shall be barred to demaund the same land because of the sayde warrantie, because that such collaterall warrantye of tenaunt in dowre is not remedied by any statute. The same Lawe is where tenaunt for terme of life maketh an alienation with warranty &c. and dyeth, & the warranty discendeth to him that had the reuersion or the remainder &c. they shall be barred by such warranty &c.

¶ Also, in the sayd case if it so were that whē the tenaunt in dower alieneth &c. the heyre was within age, and also at that time that the warrantie discendeth vpon him, he was with in age, in this case the heyre may after enter vppon the alienee notwithstanding the warranty discended &c. because that no laches shal bee adiudged in the heyre within age, that he entred not vpon the alienee in the lyfe of the tenaunt in dower, but if the heyre was with in age at the time of the alienation, and after he came to full age in the life of the tenaunt in dower, and so being of full age, he entred not in the life of the tenaunt in dower, and after the tenant in dower dyeth there parauenture the heyre shall be barred by such warranty because it shalbe accounted hys folly ỳ he being of full age, entred not in the life of the tenant in dower &c.

¶ Also it is spoken in the ende of the sayde

estatute

eſtatute of Gloceſter, that ſpeaketh of the alie-
nation with warranty made by the tenant by
the curteſe, in ſuch forme.

¶ Alſo in the ſame maner ꝑ heire of ꝑ womā
after the death of his father & mother ſhal not
be barred of action, if he demaund the heritage
or the mariage of his mother by a writ of En
tre that his father aliened in the tyme of hys
mother, whereof no fine is leuied in the kings
court &c. And ſo by force of ꝑ ſame ſtatut if the
huſband of the wyfe alien the heritage or ma-
riage of his wyfe in fee with warranty &c. by
his deede in the countrey, this is cleer law that
hys warranty ſhal not barre the heyre except
he haue enough by diſcent &c. But the doubt
is if that the huſband alien the heritage of hys
wife by fine leuyed in the kings courtes wyth
warrantie &c. If this ſhal barre the heire with
out any diſcent in the value &c. And as to that
I wil ſay here certain reaſons ꝑ I haue heard
ſay in this matter. I heard my maſter ſir Ry-
chard Newton late cheefe Juſtice of the com-
mon place, ſay once in the ſame place, that ſuch
warranty that the baron maketh by fine leui-
ed in the Kynges courte ſhall barre the heyre
though that he haue nothing by diſcent, be-
cauſe the ſtatute ſayth, whereof no fine is le-
uied in the kings court. &c. And ſo by hys op-
pinion, this warranty by fine &c. abydeth yet
a collaterall warrantie as it was at the com-
mon lawe not remedyed by the ſayd eſtatute,
becauſe that the ſayd eſtatute accepteth the a-

alyenation by fine with warrantie. And some other haue sayd & yet say the contrary & thys is their proofe, that as by the same Chapiter of the sayde estatute, it is ordeined that the warrantie of the tenaunt by the curtesy shall not barre the heire except he haue enough by dyscent &c. though ꝑ the tenant by the curtesy leuy a fine of the same landes with warranty &c. as strongly as he can, yet this warranty shall not bar ꝑ heire except he haue assets or enough by discent &c. And I beleeue that this is lawe and therefore they say that it should bee inconuenient to vnderstand ꝑ statute in such forme that a man that hath not but in the ryght of hys wyfe, may by fine leuied by him selfe of the tenements that he hath but in right of his wyfe with warrantye &c. barre the heyre of the sayde tenementes without discent of the fee simple &c, where the tenant by curtesy can not doo it. But they haue sayde, that the statute shall be vnderstood after this forme, that is to saye, where the statute speaketh whereof no fine is leuied in the Kynges courte, that is to say, whereof no lawfull fine is rightfully leuyed in the same kinges court, and that is, whereof no fine of the husband and hys wyfe is leuyed in the kinges Court, for at the time of the making of the sayd statute, euery estate of landes or tenements that any man or woman had that should discend to his heyre, was fee simple without condition or vpon condition in deede or in lawe. And be cause that such

fine

fine then might lawfully haue bene leuyed by the husband and his wife, and that if the heires of the husband warraunt &c. such warranty shall barre the heyre &c.

¶ And so they say that this is the vnderstanding of the said statute, for if the husband and the wife made a feoffement in fee by deede in the countrey, the heyre after the decease of the husband & the wife shall haue a writ of Entre sur cui in vita &c. Notwithstanding the warranty of ỹ husbande. Then if no such exception was made in ỹ statut of ỹ fine leuyed &c. notwithstanding ỹ fine leuied by ỹ husbande & the wyfe, because the words of the statute before the exception of the fine leuied &c. be generally &c. that is to say, that the heyre of the woman after the death of her husbande, and the wyfe, shal not be barred of action if he demand the heritage or the mariage of his mother by a writ of Entre that his father alienes in the time of his mother, and so it should be in the case of the statute, except such wordes were that is to say, whereof no fine is leuyed in the kinges court. And so they say that this is to vnderstande, whereof no fine by the husbande and the wife is leuyed in the kynges court the which is lawfully leuied in such case. For if the Iustices haue knowledge ỹ a mā that hath nothing but in the right of hys wife, wyll leuy a fyne in his name onely, they wyll not nor ought not to take such fine to be leuied by the

husband only without meaning the wife ther fore enquire of this matter.

¶ Also it is to wete ꝑ in such wordes where the heyre demandeth the heritage or marriage of his mother, this word (where) is a disiunctiue, and is as much to say, if the heire demaund the heritage of his mother, that is to be vnderstoode, the tenement that his mother had in fee simple by discent or by purchase, or if the heyre demaund the marriage of his mother in frankmariage.

¶ Also where it is moued in diuers deedes these wordes in latin. Ego & heredes mei &c. warrantizabimus et imperpetuum defendemus, it is to see what effect hath that worde, defendemus in such deedes: and it seemeth that it hath not the effect of warrantise, nor comprehendeth any clause of warrantise, for if it should be so ꝑ it taketh effect or cause of warrantise, then it should be put in some fines leuied in the kinges court, and a man neuer saw that this word Defendemus was in fine but onely thys word Warrantizabimus, by which it seemeth that this verbe Warrantizo, maketh warranty, and is the cause of warrantize, and none other word in our lawe.

¶ Also if tenaunt in the tayle be seysed of tenements deuysable by testament after the custome &c. and the tenaunt in the tayle alieneth the tenements to his brother in fee, and hath issue and dyeth, and after his brother deudeth by

by his testament the same tenements to another in fee, and bindeth him and his heires to warrantise &c. and dyeth without issue, it seemeth that this warranty shall not barre the issue in the tayle if hee wyll sue his writte of Formedon, because that his warrantie, discended not to the issue in the tayle, in so much as the vncle of the issue was not bounde by force of the same warranty in his life. And ỹ cause that he could not warrant the land in hys life, in so much that the deuisee could not take any execution or effect but after his decease, and in so much that the vncle in his life was not hold to warranty, such warrantise may not discend from him to the issue in the taile. &c. for nothing may discende from the auncester to hys heyre, but the same that was in the auncester. Also a warranty may not goe after ỹ nature of tenements by custome, but onely after the forme of the common Lawe. For if tenaunt in tayle be seised of tenementes in borough English, where the custome is that all tenements of the same borough ought to discende to the yongest sonne, and he discontinueth the tayle with warrantie &c. and hath issue two sons & dieth seisen of other lands & tenements in the same borough in fee simple to the value and more of the tenements tailed, and so forth yet the yongest sonne shall haue a Formedon of the tenements tayled, & shall not be barred by the warranty of his father, though enough to him discended in fee simple from ỹ same Father after the custome, for thys that the war-

rantie discendeth vpon the elder brother that is in full lyfe &c, and not vpon the yonger son. In the same maner it is of collaterall warrantise made of such tenements where ꝑ warrantise discendeth to the elder sonne &c, thys shall not barre the younger son. &c. In the same maner it is of tenementes in the shire of Kent, which be called Gauelkind, ꝑ which tenemēts be departable among the brethren &c. after the custome &c. if any such warranty be made by their auncestours, such warranty discendeth alonly to the heire that is heyre by the commō law, and not to all the heyres which are heires of such tenements after the custome &c.

Also, if tenaunt in tayle haue issue two daughters enter, and a straunger disseiseth them of the same tenementes, and one of the daughters releaseth by her deede to the disseysour all her right, & bindeth her and her heyres to warrantyse, and dyeth without issue, in thys case the sister that suruiueth may wel enter and put out the disseisor of al ꝑ tenements for this that such warrantyse is no dyscontinuance nor collaterall warrantise to the sister that suruiueth, for thys that they be of halfe blood, and the one may not be heyre to the other after the comon lawe. But otherwyse it is where there be daughters of tenauntes in the tayle by one venter.

¶ Also, if tenaunt in the tayle let tenements to another for terme of lyfe, ꝑ remainder to an

other

other in fee, and the collaterall auncester conūr
meth the estate of the tenant for terme of life & bindeth him and his heires to warrantise for terme of lyfe of ꝑ tenant for terme of life & dyeth, & the tenant in ꝑ taile hath issue and dieth. now this issue is barred to aske ꝑ tenemēts by writ of Formedon during the life of ꝑ tenant for terme of life, because of ꝑ collaturall discent vpon the issue in the tayle. But after the decease of ꝑ tenant for terme of life, the issue shall haue a Formedon &c. And vppon this I haue heard a reason that this case shall proue by an other case, that is to say, if a man let his lande to another, to haue and to holde vnto him and to his heyres for terme of anothers life, & the lessour dyeth, lyuing him to whose life &c. And a stranger entreth into the land, that the heyre of ꝑ lessee may put him out for this that in the case next aforesayd, in so much that a mā may binde him and his heires to warraunt to the tenaunt for terme of lyfe, alonely during the lyfe of the tenant for terme of life, and the warrantyse dyscendeth to the heyre of him that made the warrantise of inheritaunce, but alonely for terme of anothers lyfe, by the same reason where tenementes bee let to a man, to haue and to holde to him and to hys heyres for terme of anothers lyfe, if the father dye, liuing him to whose life &c. his heyre shall haue the tenementes lyuing him to whose life &c. For they haue said, that if a man grant

an annuity to another to haue & to take to him & to his heires for terme of anothers life if the grauntee die &c. that after his heire shall haue ꝑ annuitie during ꝑ life of him to whose life &c. Quære de ista materia. &c.

¶ But where such a lease or graunt is made to a man and to his heires for terme of yeres, in this case the heyre of the lessee and the grantee shall neuer haue after the death of the lessee or the grantee that, that is so letten or graunted, for this that it is a chattel reall, and all chattels reals by the common Law shal come to the executors of the grauntee or the lessee, and not to the heyre &c.

¶ Also in some cases it may be, that howbeit that a collateral warrantise bee made in fee &c. yet such warrantise may be defeated and anienented. As the tenant in the taile discontinueth the taile in fee, and the discontinue is disseysed, and the brother of the tenaunt in the tayle releaseth by his dede to ꝑ disseysour al his right, &c. with warrantise in fee, and dyeth wythout issue, and the tenant in the tayle hath issue and dyeth, nowe the issue is barred of the action by force of the collaterall warrantise discending vpon him, but if after this the discontinue enter vpon the disseisor, then may the heyres in the tayle haue his action of Formedon &c, for this that the warrant is aniented and defeated. For when the warrantise is made vnto a man vpon any estate that then he had, if the estate be defeated, the warranty is defeated.

¶ In

¶ In the same maner it is if the discontinue make a feoffement in fee reseruing to him certain rent, and for default of payment a reentre &c. and a collaterall aunceſter releaseth to the feffee that hath estate vpon condition &c. and dyeth without issue though that the warranty discended vpon the issue in the tayle, yet if after the rent be behinde, and the discontinue entreth into the lande. &c. then the issue in the tayle shall haue his recouer by a writ of Formedon, for this that the warranty collaterall is defeated. And so if any such collaterall warranty be pleaded against the issue in the tayle in his action of Formedon, he may shewe the matter as is aforesayd, howe the warranty is defeated, & so he may wel maintaine hys actiō.

Also, if tenant in the tayle make a feffement to hys vncle, and after his vncle maketh a feoffement in fee wyth warrantise &c. to another and after the feoffee of the vncle enfeoffeth a gaine the vncle in fee, and after the vncle enfeoffeth a straunger in fee without warrantyse, and dieth without issue, and the tenant in the tayle will bring his writte of Formedon agaynst the straunger that was last feoffe, and that by the vncle, in this case the issue shal neuer be barred by ỳ warranty that was made by the vncle to the said first feoffee of his vncle for this that the sayd warranty was defeated and aniented, for this that the vncle tooke agayne to him as great estate of hys sayd fyrst feoffe, to whom the warranty was made, as the same feffe had of him. And ỳ cause why the

warrantie

rantie is aniented in this case, is this, that is to say, that if the warrantise were in his force, then the vncle shall warrant vnto himselfe, that may not bee, but if the feoffe made estate to the vncle for terme of life or in fee tayle sauing the reuersion vnto him &c. Or that he make a gyft in the tayle to the vncle, or a lease for terme of life the remainder ouer &c. In thys the warrantise is not all vtterly aniented, but it is put in suspence during the estate that the vncle had, for after this that the vncle is dead without issue, then hee in the reuersion or he in the remainder shall barre the issue in the tayle of his wyfe of Formedon by the collaterall warrantise in such case &c. But otherwyse it is where the vncle had as great estate in the lande by the feffe to whom ỳ warrantise was made as the feoffe had of him. &c.

¶ Also, if the vncle after such fessement made with warrãtise, or a release made by him with warrantise be attaint of felony or outlawed of felony, such collaterall warranty shall not bar nor greeue the issue in the tayle, for this that by the attainder of felony, the blood is corrupt betweene them. &c.

¶ Also, if tenant in the tayle be disseised, and after maketh a release to the disseisour wyth warrantyse in fee, and after the tenaunt in the tayle is attaint, or outlawed of felony, & hath issue and dyeth, in thys case the issue in the taile may enter vpon the disseisour.

¶ And ỳ cause is for this, ỳ nothing maketh discon-

discontinuance in this case but the warranty and the warranty may not discend to the issue in the tayle, for this that the blode is corrupt betweene him that made the warrantise and the issue in the tayle. For the warrantyse alwaye abydeth at the common lawe, & the common lawe is such, that when a man is outlawed or attaint of felony, which outlawry is an attainder in the Law, that the blode betweene him and hys son and all other which should be sayd his heyres, is corrupt, so that nothyng by discent may discend to any that may bee hys heyre by the common lawe. And the wyfe of such a man that is so attaint, shall neuer be endowed in the tenements of her husband so attant. &c.

¶ And the cause is because men should more eschewe to doo felony &c. But the issue in the tayle, as to the tenements tailed, is not in such case barred, because he is inheritable by force of the statut, and not by the course of the common law. And therfore such attaynder of hys father or of his auncester in the taile &c. shall not put hym out of his ryght, that he shoulde haue by force of the tayle.

¶ Also, yf tenaunt in the tayle enfeoffe hys vncle which enfeffeth another wyth warrantye &c. if after the feoffee by his deede releale to the vncle all maner of warranty, and al maner of couenants reals, or al maner of demaunds, by such releale the warranty is extinct. And if the warrantye in such case bee pleaded agaynste the heyre in the tayle that bryngeth hys wrytte of Formedon to barre the heire of

hys

his action, if the heire haue and plead the sayde releasse &c. he shall defeate the plee in barre. &c. And many other causes and matters there be wherby a man may defeate warranties.

¶ And it is to weete, that in the same maner as collaterall warrantie be defeated &c. For if the heire in the taile bring a writ of Formedon, and a lyneal warrantie of his auncester inherytable by force of the tayle be pleaded against him, with that, the assets to him discended of fee simple by the same auncester ỹ made the warrantie, if the heire that is demaundant may adnul and defeate the warranty, this sufficeth to him, for the discent of other tenements of fee simple make nothing to barre the heire without the warrantie. &c.

FINIS.

¶ Here beginneth the Table of this present booke.

NOwe haue I made for thee my sonne three bookes.
The first is of estates that men haue of lands or tenements, that is to say
Of tenant in fee simple.
Tenant in fee tayle.
Tenant in the taile after possibilitie of issue extinct.
Tenant by the curtesy of England.
Tenaunt in dower.
Tenant for terme of life.
Tenant for terme of yeres.
Tenant at will by the common lawe.
Tenant at will by the custome of the maner.

The seconde Booke.

¶ The second booke is of Homage.
Fealty.
Escuage.
Knights seruice.
Socage.
Frank almoigne, or free almes.
Homage auncestrell.
Graund sergeanty.
Petty sergeanty.
Tenure in burgage.
Tenure in villenage.
Of three manner of rentes, that is to say, rent seruice.

Rent

Rent charge.
And rent seek.
¶ And these two small bookes, haue I made for thee for to vnderstand better certaine chapiters of the auncient bookes of tenures.

The third booke.

¶ The third booke is of parceners.
Of ioynetenauntes.
Tenants in common.
Estates of landes or tenements vppon condition.
Discentes that take away entres.
Continuall claime.
Releses.
Confirmations.
Attournements.
Remitters.
Of garranties, that is to say.
Garrantie lineal.
Garrantie collaterall.
And garrantie that beginneth by disseisin.

¶ And know thou my sonne that I wyll not that thou beleeue that all that that I haue sayd in the sayd bookes is lawe, for that wyll I not take vppon mee nor presume. But of those thinges that be not law enquire & learne of my wise masters learned in the lawe. Notwithstanding though that certaine thinges that bee noted and specifyed in the sayde bookes bee not lawe, yet such thinges shall

make

make thee more apt and able to vnderstande, learne the arguments and the reasons of the lawe. For by the arguments and the reasons in the lawe, a man may more soner come to the certaintie and to the knowledge of the lawe.

Lex plus laudatur quando ratione probatur.

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Cum priuilegio.